

By: Senator(s) Harden

To: Judiciary, Division A

SENATE BILL NO. 2197

1 AN ACT TO REQUIRE ALL COURTS TO HAVE COURT-APPOINTED  
2 INTERPRETERS TO ASSIST IMMIGRANTS WHO HAVE NEED TO USE THE COURT  
3 SYSTEM; TO ENACT DEFINITIONS; TO PROVIDE THAT INTERPRETERS MAY BE  
4 COMPENSATED OR VOLUNTEERS; TO REQUIRE INTERPRETERS TO TAKE AN  
5 OATH; TO SPECIFY THE SITUATIONS IN WHICH AN INTERPRETER IS NEEDED;  
6 TO SPECIFY THE SITUATIONS IN WHICH A RECORD SHALL BE MADE OF  
7 INTERPRETED TESTIMONY; TO PROVIDE THAT ANY EXPENSE IN COMPENSATING  
8 AN INTERPRETER CAN BE ASSESSED AS COSTS; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1. Definitions.** The following words and phrases  
11 shall have the meanings ascribed to them unless the context  
12 clearly requires otherwise:

13 (a) "Non-English speaker" means any party or witness  
14 who cannot readily understand or communicate in spoken English and  
15 who consequently cannot equally participate in or benefit from the  
16 proceedings unless an interpreter is available to assist the  
17 individual. The fact that a person for whom English is a second  
18 language knows some English does not prohibit that individual from  
19 being allowed to have an interpreter.

20 (b) "Interpreter" means any person authorized by a  
21 court and competent to translate or interpret oral or written  
22 communication in a foreign language during court proceedings.

23 (c) "Court proceedings" means a proceeding before any  
24 court of this state or a grand jury hearing.

25 **SECTION 2. Interpreter to be Appointed.** All courts of this  
26 state shall appoint an interpreter when required under this act.

27 **SECTION 3. Compensation.** The court may appoint either an  
28 interpreter who is paid or a volunteer interpreter.

29 **SECTION 4. Oath, Confidentiality and Public Comment.** (1)

30 Prior to providing any service to a non-English speaking person,

31 the interpreter shall subscribe to an oath that he or she shall  
32 interpret all communications in an accurate manner to the best of  
33 his or her skill and knowledge.

34 (2) The oath shall conform substantially to the following  
35 form:

36 INTERPRETER'S OATH

37 "Do you solemnly swear or affirm that you will faithfully  
38 interpret from (state the language) into English and from English  
39 into (state the language) the proceedings before this court in an  
40 accurate manner to the best of your skill and knowledge?"

41 (3) Interpreters shall not voluntarily disclose any  
42 admission or communication that is declared to be confidential or  
43 privileged under state law. Out-of-court disclosures made by a  
44 non-English speaker communicating through an interpreter shall be  
45 treated by the interpreter as confidential or privileged or both  
46 unless the court orders the interpreter to disclose such  
47 communications or the non-English speaker waives such  
48 confidentiality or privilege.

49 (4) Interpreters shall not publicly discuss, report or offer  
50 an opinion concerning a matter in which they are engaged, even  
51 when that information is not privileged or required by law to be  
52 confidential.

53 (5) The presence of an interpreter shall not affect the  
54 privileged nature of any discussion.

55 **SECTION 5. Record of Interpreter Testimony.** (1) No record  
56 shall generally be made of the non-English testimonial statements.  
57 Where a challenge is made to the accuracy of a translation, the  
58 court shall first determine whether the interpreter is able to  
59 communicate accurately with and translate information to and from  
60 the non-English speaking person. If it is determined that the  
61 interpreter cannot perform these functions, arrangements for  
62 another interpreter shall be made, unless testimony that is  
63 cumulative, irrelevant or immaterial is involved. Where the court

64 determines that the interpreter has the ability to communicate  
65 effectively with the non-English speaker, the court shall resolve  
66 the issue of the contested translation and the record to be made  
67 of the contested testimony in its discretion. Any transcript  
68 prepared shall consist only of the English language spoken in  
69 court.

70 (2) Whenever a party was denied the right to use an  
71 interpreter of the party's own choosing, the court shall make an  
72 audio or audio-visual recording of any testimony given in a  
73 language other than English. This includes any colloquies between  
74 the court and any non-English speaking persons, statements or  
75 testimony made to the court given by a non-English speaking  
76 person, as well as all translations provided by the interpreter in  
77 the proceedings. This recording shall become part of the record  
78 of the proceeding. There is no requirement to record the  
79 translation for a non-English speaking party of other proceedings  
80 where the party does not directly participate, such as the  
81 translation of testimony of an English speaking witness when the  
82 party is represented by counsel, nor shall a record be made of  
83 private conversations between parties and counsel.

84 (3) In all cases where an audio or audio-visual recording is  
85 not required, the court shall have the discretion to authorize the  
86 making of such a recording.

87 **SECTION 6. Determination of Need for an Interpreter.** (1)

88 An interpreter is needed and a court interpreter shall be  
89 appointed when the judge determines, after an examination of a  
90 party or witness, that: (a) the party cannot understand and speak  
91 English well enough to participate fully in the proceedings and to  
92 assist counsel; or (b) the witness cannot speak English so as to  
93 be understood directly by counsel, court and jury.

94 (2) The court should examine a party or witness on the  
95 record to determine whether an interpreter is needed if:

96 (a) A party or counsel requests such an examination;

97 (b) It appears to the court that the party or witness  
98 may not understand and speak English well enough to participate  
99 fully in the proceedings; or

100 (c) If the party or witness requests an interpreter.

101 The fact that a person for whom English is a second language  
102 knows some English should not prohibit that individual from being  
103 allowed to have an interpreter.

104 (3) After the examination, the court should state its  
105 conclusion on the record, and the file in the case shall be  
106 clearly marked and data entered electronically when appropriate by  
107 court personnel to ensure that an interpreter will be present when  
108 needed in any subsequent proceeding.

109 (4) Upon a request by the non-English speaking person, by  
110 counsel, or by any other officer of the court, the court shall  
111 determine whether the interpreter provided is able to communicate  
112 accurately with and translate information to and from the  
113 non-English speaking person. If it is determined that the  
114 interpreter cannot perform these functions, the court shall  
115 provide the non-English speaking person with another interpreter.

116 **SECTION 7. Interpreter's Fees and Expenses.** (1) Any  
117 interpreter providing services under this act who is not a  
118 volunteer interpreter shall be compensated by the court.

119 (2) The expenses of providing an interpreter in any court  
120 proceeding may be assessed by the court as costs in the  
121 proceeding.

122 **SECTION 8.** This act shall take effect and be in force from  
123 and after July 1, 2005.