

- SUBJECT:** Allowing use of qualified telephone interpreters in criminal cases
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Keel, Riddle, Denny, Escobar, Hodge, Pena, Reyna  
0 nays  
2 absent — P. Moreno, Raymond
- WITNESSES:** For — Kimberly Jozwiak, Texas Justice Court Judges Association  
Against — Tomas C. Leon, Texas Association of Judicial Interpreters and Translators  
On — Chris Kadas, Texas Department of Licensing and Regulation; Steven Mines
- BACKGROUND:** Code of Criminal Procedure, art. 38.30, requires a court to appoint an interpreter in a criminal proceeding upon a motion by any party and if the court determines that the defendant or a witness does not understand and speak English. Any person may be subpoenaed, attached, or recognized to appear before the judge or a court to act as an interpreter. If the only available interpreter can not adequately interpret or is not familiar with the use of slang, the court may permit the non-English speaker to nominate someone to act as an intermediary between that person and the interpreter.  
  
A licensed court interpreter is an individual licensed by the Texas Commission on Licensing and Regulation to interpret court proceedings for someone who can hear but does not speak or understand English. To be licensed, one must pass a written and oral exam in the relevant language.
- DIGEST:** CSHB 1601 would allow a court or magistrate to use a qualified telephone interpreter in the trial of a class C misdemeanor or in a proceeding before a magistrate if an interpreter were not available to appear in person. A qualified telephone interpreter also could be used if the only available interpreter did not possess adequate interpreting skills or was unfamiliar with the non-English speaker's use of slang.

A "qualified telephone interpreter" would be defined as a telephone service that employed licensed court interpreters.

CSHB 1601 also would amend this section to use gender-neutral language.

The bill also would allow a judge to require an offender to reimburse the county for the cost of an interpreter as a condition of community supervision if an interpreter was used at trial.

The bill would take effect September 1, 2005.

**SUPPORTERS  
SAY:**

CSHB 1601 would clarify that a qualified telephone interpreter could be used in a proceeding if no qualified interpreter were available to appear in person.

In many smaller counties, it can be difficult to find interpreters to accommodate the many different language needs of defendants or witnesses. It is especially difficult to find an interpreter when one is needed in the middle of the night. Some telephone services offer licensed telephone interpreters of all languages 24 hours a day, seven days a week. This bill would enable magistrates and courts to access an interpreter of any language at all hours of the day, ensuring that non-English speakers had access to a fair trial.

The bill would allow the use of a telephone service only if an interpreter were unavailable to appear in person or if the available interpreter could not adequately translate. If an interpreter were available and able to translate, the interpreter still would be required at the proceeding.

It is not clear that existing law allows the use of telephone interpreters. Current law does not specify that an interpreter must be present at the court or proceeding, so it is open to interpretation. This bill would make clear that a telephone service could be used if an interpreter were unavailable to appear in person.

**OPPONENTS  
SAY:**

This bill is unnecessary because existing law does not prevent a court or a magistrate from using a telephone interpreter. Courts and magistrates currently use telephone services when they can not find interpreters to appear in person.

The effect of this bill could be to encourage the use of telephone interpreter services to save the burden and expense of finding and bringing an interpreter to the proceeding. It is important that interpreters appear in person at proceedings when possible. Accurate interpretation may require the interpreter to view mannerisms, such as facial expressions and hand movement. People must have accurate representation in court to ensure a fair trial.

The bill would allow a judge to force a defendant to pay for any interpreter used during the defendant's trial as a condition of community supervision. If the defendant needed the interpreter, this essentially would require defendants to pay for their constitutional right to a fair and just trial. Moreover, a defendant should not be forced to pay for an interpreter for a witness that may be used against the defendant during trial.

**NOTES:**

The substitute differs from the original bill by allowing a judge to require the defendant to pay the cost for any interpreter used in the case as a condition of community supervision.

A related bill, HB 1642 by Hartnett, which would allow non-licensed interpreters to be used in court under certain conditions, passed the House on second reading yesterday and is scheduled for third-reading consideration today.