VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 53.1 a section numbered 53.1-1.3, relating to Department of Corrections; language services for offenders.

[H 553]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 53.1 a section numbered 53.1-1.3 as follows:

§ 53.1-1.3. Language services for offenders.

A. An offender is considered to have limited English proficiency if (i) such offender states or indicates that he cannot effectively communicate in English, (ii) an employee of the Department discerns that the offender is not English proficient based on an interaction or multiple interactions with such offender, (iii) the offender was provided an interpreter at a court hearing or other legal proceeding, or (iv) a Comprehensive Adult Student Assessment Systems test determines the lack of English proficiency of such offender.

B. The Department shall take reasonable steps to provide offenders with limited English proficiency with meaningful access to Department facilities, services, programs, and activities to ensure that language does not prevent employees from communicating effectively with such offenders. The limited English proficiency status of an offender shall not prevent him from accessing vital services such as programs, treatment, education, and classification assignments.

C. Department employees shall ensure that offenders with limited English proficiency are not penalized and that their rights are not adversely affected due to a lack of language assistance. A lack of language assistance also shall not negatively impact the length of the incarceration, facility assignment, postrelease status, supervision, or classification of such offender. No offender with limited English proficiency shall be penalized for failing to obey a command if such failure is due to a lack of free language assistance.

D. Department employees shall provide offenders with limited English proficiency verbal and written language assistance in the areas of treatment and education programming, safety, medical, mental health, grievance, and proceedings such as disciplinary and classification at no cost to the offender.

E. All offenders designated as limited English proficient shall be provided an "I Speak" card to assist employees in identifying such offender's primary language for both oral and written communication, which shall be recognized by Department employees in all interactions.

F. Department employees shall provide public notice of language services and these notices shall be posted in areas accessible by all offenders.

G. The Director shall designate a language services coordinator responsible for overseeing and directing language services for offenders with limited English proficiency, including the development and management of applicable contracts, documents, and resources. The language services coordinator shall:

1. Coordinate language assistance services with facility and office language services monitors. Such services shall include (i) academic, job training, and cognitive programming; (ii) substance use treatment and testing; (iii) mandatory programming or programming that impacts the term of incarceration or supervised release; (iv) classification and Institutional Classification Authority hearings; (v) disciplinary hearings; (vi) medical assessment and treatment; (vii) mental health assessments and treatment; (viii) visitation; (ix) court hearings, as requested by the court; (x) job or program assignments and pay level; (xi) Prison Rape Elimination Act (P.L. 108-79) screening, orientation, and education; and (xii) filing of inmate grievances, including informal complaints;

2. Coordinate the identification of language service needs in the Department and strategies for responding to those needs;

3. Serve as the contract administrator for all Department language services contracts for interpreter and translator services;

4. Identify, in coordination with facility or office language services monitors, the regularly encountered languages of the offenders with limited English proficiency of such facility or office;

5. Translate the general conditions of supervision and all intake documents to the language spoken by the offender with limited English proficiency and provide such offender a printed copy;

6. Maintain a directory of all qualified bilingual employees throughout the Department, including the non-English languages they speak and their contact information, work locations, assignments, and shifts;

7. Ensure that the current offenders with limited English proficiency verbal and written language services needs are identified and the resources to address those needs are secured;

8. Identify the criteria to be used when initially designating the languages for translations based on

demographic data and usage projections;

9. Maintain Department data, in coordination with the language services monitors and the language services vendors, on the number of, and selected interactions with, offenders with limited English proficiency and provide information, as requested, to the Director;

10. Develop and maintain systems to ensure that all employees and members of senior leadership are aware of the offenders who require language assistance services and coordinate with the facility and office language services monitor to implement those systems;

11. Review essential documents to determine translation requirements;

12. Develop a system to distribute translated documents to all facilities and offices, post translated documents electronically, and maintain an adequate supply of print copies as needed for distribution;

13. Identify the training needs and provide this training to language services monitors, facility and office employees, and supervisors who require access to language services and language service providers;

14. Establish protocols for ensuring quality, timely, cost-effective, and appropriate levels of confidentiality in translations, interpretation, and bilingual employee communications;

15. Exchange information on promising practices with other departments and among facilities and offices;

16. Establish a system to coordinate with the courts and jails to identify and respond to offender language needs as early as possible;

17. Review the Department's progress toward:

a. Providing offenders with limited English proficiency meaningful access to services, activities, and programs;

b. Developing reports; and

c. Revising operating procedures and Department practices when appropriate;

18. Develop the testing and certification protocols required to designate an individual as a qualified interpreter or a qualified translator.

19. Maintain and make available statewide a directory, organized by language and by location, that provides information gathered from human resources on Department employees who are qualified interpreters or translators; and

20. Convene annual meetings with facility and office language services monitors to develop, implement, and evaluate the requirements of this section.

H. Each Facility Unit Head and Probation and Parole Chief shall designate a facility or office language services monitor, as appropriate. Such language services monitor for each facility and office shall:

1. Work with the language services coordinator to identify the language services needs for the facility or office and the strategies for meeting those needs;

2. Identify all regularly encountered languages spoken by at least five percent of the offenders in that facility or under supervision of that office;

3. Ensure facility and office employees are trained on and compliant with this section;

4. Establish and maintain an accurate and up-to-date language assistance resource list specific to the facility or office. Ensure all employees and offenders are made aware of the list and how to access the resources;

5. Create and maintain a facility or office-specific directory of all qualified bilingual employees that includes a list of the non-English languages such employees speak and their contact information, assignments, and shifts;

6. Submit the facility or office directory to the language services coordinator and employees on a quarterly basis; and

7. Ensure posting of the language identification tool, completion of assessments, data entry into the Virginia Corrections Information System (VACORIS), and the distribution of "I Speak" cards.

I. Department employees shall provide offenders with information on available language assistance services at intake into the Department, upon transfer to another Department facility, during facility orientation, during initial contact for probationers or parolees on supervision, and prior to all classification and disciplinary hearings.

Employees in coordination with the language services monitor shall use the information available in VACORIS to determine the primary or dominant language of an offender with limited English proficiency. Department employees shall provide offenders with limited English proficiency with language interpretation services during the following interactions:

1. Investigations or questioning;

2. Intake and reception into the Department;

3. Transfer into each Department facility;

4. Medical and mental health interactions;

5. Orientation;

6. Resident grievances;

7. Disciplinary hearings;

8. Education and programming;
9. Housing assignments;
10. Court appearances; and
11. Parole hearings.

Regardless of status, offenders with limited English proficiency may request interpreter services by making a verbal request to any Department employee or the language services monitor or by submitting an Interpreter Services Request. Nonemergency interpreter assistance shall be provided within 48 hours of the request. Department employees shall provide a qualified interpreter for all sensitive, confidential, or privileged communication. Department employees shall use the Department language services contract when a qualified bilingual employee is required but not available. Internet, machine-learning, and artificial-intelligence based translation services may be used where the service is certified or otherwise specifically built for the purpose of providing accurate translations.

J. As a part of the intake process, a Department employee will assess all offenders to determine any language assistance needs. Department employees shall determine whether the individual's primary oral communication language and primary written communication language is English or if it is another language.

Department employees shall document the primary language of the offender for oral and written communications in VACORIS and select the Non-English-Speaking checkbox on the demographics screen if applicable. The counselor or parole and probation officer, with assistance from the language services monitor, if necessary, shall place a Special Needs: limited English proficiency alert on every offender with limited English proficiency assigned to his caseload. When the limited English proficiency status of an offender affects such an individual's ability to communicate, health care employees shall note such individual's limited English proficiency status on the individual's health record. A Department employee shall note the limited English proficiency status of an offender at the time the record is established or as soon as practicable.

K. Any offender may request translation services by making a verbal request to any employee or the language services monitor. Nonemergency translator assistance shall be provided within 48 hours. Qualified interpreters and qualified translators shall be provided at no cost to the offenders with limited English proficiency. The Department shall provide a translated version of all documents designated essential by the language services coordinator into the regularly encountered languages of offenders. For an offender with limited English proficiency whose primary language is not a regularly encountered language, Department employees, to the extent possible, shall obtain a translation of each essential document into such an individual's primary language. For such a translation, internet, machine-learning, and artificial-intelligence based translation services may be used where the service is certified or otherwise specifically built for the purpose of providing accurate translations. All essential documents shall be translated at no cost to the offender with limited English proficiency. Essential documents include:

1. Offender consent forms;
2. Informal complaint or grievance forms; determinations on informal complains, grievances, or appeals;
3. Intake forms requesting vital information, including a mental health screening form and emergency contact list;
4. Written notices of rights, denials, loss, or decreases in benefits or services, parole, disciplinary or classification hearings;
5. Notices to offenders regarding their rights and the procedures related to the PREA protections;
6. Notices of disciplinary actions;
7. Notices posted for religious and recreational activities;
8. Notices advising offenders with limited English proficiency of free language assistance;
9. Facility rule books;
10. Medical forms, notices, procedures, diagnoses, conclusions, and instructions;
11. Refusal forms;
12. Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; and
13. Applications to participate in a Department program or activity or to receive Department benefits or services.

L. The language services coordinator, in cooperation with language services monitors, shall ensure offenders with limited English proficiency are notified of the right to file a complaint regarding access to language services.