

**SENATE BILL REPORT**

**SB 6051**

**AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 2, 1994**

**Brief Description:** Providing for speed measuring device expert testimony.

**SPONSORS:** Senators Quigley, Ludwig and A. Smith

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 6051 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Quigley, Roach, Schow and Spanel.

**Staff:** Susan Mahoney (786-7717)

**Hearing Dates:** January 26, 1994; February 2, 1994

**BACKGROUND:**

Under Washington State law and court rules, a traffic infraction may be contested. At the hearing, sworn affidavits may be used in lieu of live testimony. Speed measuring device (SMD) experts prepare affidavits regarding the testing and accuracy of the devices they maintain on a regular basis as required by law. These certificates may be introduced as evidence in lieu of the testimony of the expert absent a request to have the expert actually appear.

An increasing number of traffic infraction defendants have been requesting that the SMD experts appear in person. There are a limited number of these experts, usually only one for larger police agencies, and only four experts are employed by the Washington State Patrol to cover the entire state. Because of the limited number of experts and the short notice they are given to appear in court, the experts are often not able to appear when required. This results in a continuance of the traffic hearing which further bogs down overcrowded court dockets or results in dismissal of the citation.

The Washington State Patrol recommends that the law make clear the existence and availability of the SMD affidavits to the public. In addition, the Patrol recommends that a defendant who intends to request a subpoena be issued to the SMD expert for a contested hearing be required to give the expert's supervisor notice of his or her intent at least ten days prior to the issuance of the subpoena. Under the current court rule, a person needs to request the SMD expert's presence at least seven days (or less, if the court deems it appropriate) prior to the hearing. This leaves an inadequate amount of time to schedule the expert's court appearances or deal with schedule conflicts.

**SUMMARY:**

A defendant may request a copy of the relevant speed measuring device expert's affidavit ten days prior to the hearing.

A defendant who intends to request a SMD expert's appearance at a hearing is required to give at least ten days notice to the expert's supervisor prior to the issuance of the subpoena.

**EFFECT OF PROPOSED SUBSTITUTE:**

It is clarified that the report available by request is the affidavit of the SMD expert.

A defendant who requests the SMD expert's appearance shall be responsible for the cost if the defendant does not prevail at the hearing.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

The law would make clear the availability of the speed measuring device expert's affidavit. The law would economize resources and court time. The requirement for the nonprevailing defendant to be responsible for the costs of the experts will encourage only those defendants with legitimate issues to request the personal appearance of the expert instead of requesting the expert's presence based only on the hope that the expert will be unable to appear.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Captain Tim Erickson, WSP (pro); Tim Schellberg, WSPIC (pro); Sam Faggiano, AWC/Spokane City Prosecutor (pro)