

HOUSE BILL REPORT

HB 1181

As Passed House

January 12, 1998

Title: An act relating to evidence.

Brief Description: Taking judicial notice of radar evidence.

Sponsors: Representatives Sterk, O'Brien and Crouse.

Brief History:

Committee Activity:

Law & Justice: 1/29/97, 1/31/97 [DP].

Floor Activity:

Passed House: 3/10/97, 95-0;

Passed House: 1/12/98, 93-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lantz; Radcliff; Sherstad and Skinner.

Staff: Bill Perry (786-7123).

Background: In a court proceeding concerning a traffic offense, evidence obtained by a speed measuring device such as radar is often presented. Various evidence rules and decisions of the courts govern the admissibility of radar evidence.

The court rules on traffic infractions require the prosecution to prove that a radar device "is so designed and constructed as to . . . give accurate measurements . . . when properly calibrated and operated."

In a 1994 case, Division I of the Washington Court of Appeals held that evidence obtained by radar is admissible if the particular radar device used is shown to be reliable. Showing reliability of a device requires testimony from:

- (1) the officer who used the device indicating that the device was functioning properly at the time of the alleged offense; and

- (2) a qualified expert indicating that the device has passed tests and checks of its accuracy.

While the reliability of a particular radar device must be established, the reliability of radar technology itself need not be established. Radar evidence meets the evidentiary requirement of general acceptance as reliable in the relevant scientific community and, therefore, expert testimony about the engineering design of radar devices is not a necessary foundation to admissibility. (Bellevue v. Lightfoot) However, in an earlier case, the same court had declared that the reliability of a radar unit is not subject to "judicial notice" and that the prosecution must prove the radar unit was designed and constructed to produce accurate readings. (City of Seattle v. Peterson)

Courts sometimes take judicial notice— of facts, thus removing the requirement of proof about those facts in a trial. Generally, the rule created by case law in this state is that a court may take judicial notice of a fact that is within the common knowledge of the community,— or of a fact that is verifiably certain by reference to competent, authoritative sources.— Court rules of evidence similarly provide that a fact may be judicially noticed only if it is not subject to reasonable dispute.— The rules of evidence allow a judge to take notice of such a fact without request of a party, and require a judge to take notice if requested by a party and supplied with the necessary information.— However, a party is entitled to a hearing on the propriety of taking judicial notice.

Some statutes direct the court to take judicial notice of certain facts. These statutes generally direct or allow a court to accept the existence of certain laws or ordinances. For instance, courts are directed to take judicial notice of the constitution, common law, and statutes of every state and the federal government.

Summary of Bill: A legislative finding is made that radar devices listed by the National Highway and Traffic Safety Administration are reliable speed measuring instruments, and that courts may take judicial notice of that reliability.

Specifically with respect to traffic infraction hearings, courts are authorized to take judicial notice of the reliability of the design, construction, and function of such radar devices. The authorization to take judicial notice does not affect rules of evidence governing requirements to show that a particular device was properly calibrated and operated.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will reduce the cost of unnecessary testimony. Some law enforcement personnel work full-time just to appear and give this unnecessary testimony at hearings.

Testimony Against: None.

Testified: Representative Sterk, prime sponsor; Captain Marsh Pugh, Washington State Patrol (pro); and Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (pro).