

SENATE BILL REPORT

HB 1181

As Reported by Senate Committee On:
Law & Justice, January 21, 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: 4/3/97; 1/16/98, 1/21/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Goings, Kline, Long, McCaslin, Stevens, Thibaudeau and Zarelli.

Staff: David Johnson (786-7754)

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)

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.

It is felt that the law should be clarified in order to address the conflicting appellate court decisions and to establish a statewide standard.

Summary of Amended 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 if the State Patrol has adopted rules to determine that a device meets its standards.

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.

Amended Bill Compared to Original Bill: The State Patrol is the agency responsible for certifying radar devices, rather than the National Highway and Traffic Safety Administration.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill will reduce the cost and burden of unnecessary testimony about the scientific foundation for radar. It does not eliminate questioning about the maintenance and operation of the specific piece of radar equipment used in any particular case.

Testimony Against: None.

Testified: PRO: Captain Marsh Pugh, WA State Patrol; Jerry Hannah, WA State Patrol.