

(a) Rules of Evidence. The Rules of Evidence are applicable to criminal prosecutions.

(b) Test Reports by Experts.

(1) *Generally.* The official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears the following certification:

TEST CERTIFICATION

The undersigned certifies under penalty of perjury that:

1. I performed the test on the (substance) (object) in question;
2. The person from whom I received the (substance) (object) in question is:
_____;
3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report; and
4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:

_____.

Signature

Title

Business Address and Phone

(2) *Exclusion of Test Reports.* The court shall exclude test reports otherwise admissible under section (b) if:

(i) a copy of the certified report or certificate has not been delivered or mailed to the defendant or the defendant's lawyer at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certified report or certificate has not been delivered or mailed to the defendant at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(iii) at least 7 days prior to the trial date, or, upon a showing of cause, such lesser time as the court deems proper, the defendant has delivered or mailed a written demand upon the prosecuting authority to produce the expert witness at the trial.

(c) Breathalyzer Maintenance, Simulator Thermometer, BAC Verifier, and Simulator Solution Certificates.

(1) *Admission of Certificate.* In the absence of a request to produce a Breathalyzer maintenance technician, a BAC Verifier Data Master infrared instrument technician, or the person responsible for preparing or testing simulator solutions made at least 7 days prior to trial or such lesser time as the court deems proper, certificates substantially in the following forms are admissible in lieu of a state expert witness in any court proceeding held pursuant to RCW

46.61.506 for the purpose of determining whether a person was operating or in actual physical control of a motor vehicle while under the influence of intoxicating liquors:

BREATHALYZER MAINTENANCE AND CHEMICAL CERTIFICATION

I, _____, do certify under penalty of perjury as follows:

I am a Breathalyzer technician possessing a valid permit or certificate issued to me by the state toxicologist by virtue of his rules, WAC 448-12 and RCW 46.61.506.

On _____(date) at _____(time) I examined, tested and calibrated a Breathalyzer machine with serial No. _____ using a sealed ampul of chemicals with control No. _____ according to the methods established and approved by the state toxicologist.

I further certify that said machine was, on that date, in proper working order, and that the chemicals in ampuls with the above control number are suitable for use in this machine.

Signature of Technician

Dated: _____

BAC VERIFIER DATA MASTER CERTIFICATION

I, _____, do certify under penalty of perjury as follows:

I am employed by _____ and am certified by the state toxicologist by virtue of applicable regulations and statutes.

On _____(date) at _____(time) I examined, tested and certified a BAC Verifier Data Master instrument with serial No. _____ according to the methods established and approved by the state toxicologist.

I further certify that said instrument was, on that date, in proper working order.

Signature of Technician

Dated: _____

BAC VERIFIER DATA MASTER SIMULATOR SOLUTION CERTIFICATION

I, _____, do certify under penalty of perjury as follows:

I am employed by the Washington State Toxicology Laboratory, and a part of my responsibilities include preparing and testing the simulator solutions for the BAC Verifier Data Master breath test instrument. I possess the following qualifications:

_____.

The simulator solution, Lot Number _____ was prepared in the Washington State Toxicology Laboratory. I examined and tested this solution. It was found to conform to those standards established by the state toxicologist for the certification of simulator solution.

Dated: _____

BAC DATAMASTER SIMULATOR THERMOMETER CERTIFICATION

I, _____, do certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am employed by the Washington State Patrol and am certified as a Technician by the state toxicologist by virtue of applicable regulations and statutes.

On _____(date) at _____(time) I tested and certified simulator thermometer _____(serial number) which is installed in simulator _____(serial number) and which is attached to BAC Data Master _____(serial number). In performing the test I employed a protocol approved by the state toxicologist. I found the thermometer to comply with the standards for accuracy as required by the state toxicologist. The certification of this thermometer is valid for one year from the date of this certification.

Signature of Technician

Dated: _____

Location: _____(city and state)

(2) *Machine Not Working Properly—Certificate of Technician.* If the technician determines that a Breathalyzer machine or a BAC Verifier Data Master instrument is not in proper working order at the time of examination, the technician shall delete the last paragraph from the appropriate certificate form set forth in section (c)(1) of this rule and shall certify substantially in the following form:

I further certify that said machine was not in proper working order on _____(date) at _____M.

I further certify that I repaired or corrected said machine as required on _____(date) and as of that date at _____M. said machine was again in proper working order (and that the chemicals in ampuls with the above control number are suitable for use in this machine.) (Cross out bracketed language if not applicable.)

Dated: _____

Technician

(3) *Filing of Certificates by Clerk.* The clerk of each court of limited jurisdiction shall maintain the certificates as a public record.

(d) Speed Measuring Device: Design and Construction Certification.

(1) *Admission of Certificate.* In the absence of proof of a request to produce an electronic or laser speed measuring device (SMD) expert served on the prosecuting authority and filed with the clerk of the court at least 30 days prior to trial or such lesser time as the court deems proper, a certificate substantially in the following form is admissible in lieu of an expert witness in any court proceeding in which the design and construction of an electronic or laser speed measuring device (SMD) is an issue:

CERTIFICATION CONCERNING DESIGN AND CONSTRUCTION OF ELECTRONIC SPEED MEASURING DEVICES AND LASER SPEED MEASURING DEVICES

I, _____, do certify under penalty of perjury as follows:

I am employed with _____ as a _____.
I have been employed in such a capacity for _____ years. Part of my duties include supervising the maintenance and repair of all electronic and laser speed measuring devices (SMDs) used by _____ (name of agency).

This agency currently uses the following SMDs:
(List all SMDs used and their manufacturers and identify which SMDs use laser technology.)

I have the following qualifications with respect to the above stated SMDs:
(List all degrees held and any special schooling regarding the SMDs listed above.)

This agency maintains manuals for all of the above stated SMDs. I am personally familiar with those manuals and how each of the SMDs are designed and operated. On _____ (date) testing of the SMDs was performed under my direction. The units were evaluated to meet or exceed existing performance standards. This agency maintains a testing and certification program. This program requires:
(State the program in detail.)

Based upon my education, training, and experience and my knowledge of the SMDs listed above, it is my opinion that each of these electronic pieces of equipment is so designed and constructed as to accurately employ the Doppler effect in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator or, in the case of the laser SMDs, each of these pieces of equipment is so designed and constructed as to accurately employ measurement techniques based on the velocity of light in such a manner that it will give accurate measurements of the speed of motor vehicles when properly calibrated and operated by a trained operator.

Signature

Dated: _____

(e) Certified Report of Department of Licensing Custodian.

(1) *Generally.* A certified report from a Department of Licensing (DOL) custodian of records pertaining to a defendant's driving record(s) and a defendant's driving status on a particular date is admissible at any hearing or trial in lieu of testimony of a DOL custodian of records. The certified report shall have the same effect as if the records custodian had testified, if the report is in substantial compliance with the following certification:

CERTIFICATE OF DEPARTMENT OF LICENSING CUSTODIAN OF RECORD

I, _____ do certify under penalty of perjury as follows:

I have been appointed by the Director of the Department of Licensing as a legal custodian of driving records of the State of Washington. I certify under penalty of perjury that such records are official and are maintained in the office of the Department of Licensing, Olympia, Washington.

All information contained in this report pertains to the driving record of:

Lic. # _____ Birthdate: _____
Name: _____ Eyes: ____ Sex ____
Hgt: ____ Wgt: _____
License Issued: _____

After a diligent search of the computer files, the official record indicates that on _____ (date), the following statements apply to the status of the above named person:

The attached document(s) are a true and accurate copy of the document(s) maintained in the office of the Department of Licensing, Olympia, Washington.
(specify all documents attached to this affidavit)

Dated: _____

(name)

Custodian of Records

Place: Olympia, Washington

Date: _____

(2) *Exclusion of Test Reports:* The court shall exclude the Certificate of Department of Licensing Custodian otherwise admissible under this section if:

(i) a copy of the certificate has not been served or mailed to the defendant's lawyer, if represented, at least 14 days prior to the trial or hearing date, or upon a showing of cause, such lesser time as the court deems proper, or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certificate has not been served or mailed to the defendant at least 14 days prior to the trial or hearing date or, upon a showing of cause, such lesser time as the court deems proper;

(iii) at least 7 days prior to the trial or hearing date, or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served or mailed a written demand upon the prosecuting authority to produce a custodian of records from the Department of Licensing for trial or hearing.

(f) Continuance. The court at the time of trial shall hear testimony concerning the alleged offense and, if necessary, may continue the proceedings for the purpose of obtaining (1) the maintenance technician's presence for testimony concerning the working order of the Breathalyzer machine and the certification thereof, (2) evidence concerning the working order of the BAC Verifier Data Master instrument and the certification thereof, (3) evidence concerning the preparation of the BAC Verifier Data Master simulator solution and the certification thereof, ~~or~~ (4) evidence concerning an electronic speed measuring device or laser speed measuring device and the certification thereof, or (5) evidence concerning the certified report of the Department of Licensing. If, at the time it is supplied, the evidence is insufficient, a motion to suppress the results of such test or readings shall be granted.

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