

1 doubt that the statute is unconstitutional. *Seattle v. Eze*, 111 Wn2d 22, 26-28 (1988). In
2 *Maxwell*, the defendant challenged the motorcycle helmet law enacted in Washington in 1990.
3 Pursuant to that statute, the State Patrol adopted regulations, which attempted to define which
4 helmets were acceptable under the statute. The administrative regulation stated in its entirety,
5 “Federal Motor Vehicle Safety Standard 218 is hereby adopted by reference as the standard for
6 motorcycle helmets.” *Maxwell*, at 691. The court there stated

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8 A statute is unconstitutional if it fails to provide fair notice; if the standards to which a
9 citizen must conform are so inaccessible that an average person could not be expected to
10 discover them by reasonable research efforts, then the statute does not provide the
11 requisite notice.

12 *Maxwell*, at 691. The *Maxwell* court found the WAC regulation unconstitutional because the
13 ordinary citizen is not aware of the Code of Federal Regulations, and that even if one could find
14 them in the appropriate library, the regulations at issue covered sixteen pages of technical and
15 confusing topical sections and included seven and one-half pages of diagrams and four pages of
16 charts. The court found further that the Washington regulation

17 fails to inform the average citizen of the location or legal citation of the federal standard
18 it adopts. We have not been advised how a citizen of common intelligence should
19 discover this information.

20 *Maxwell*, at 692.

21 Washington’s mandatory seatbelt law, RCW 46.61.688, also brings into play the terms of
22 the United States Code of Federal Regulations, as adopted by the United States Department of
23 Transportation. The Motor Vehicle Safety Standards bear a DOT numbering system, which
24 includes the requirements for seatbelts in motor vehicles in Standard 208. These standards are
25 also published in The Code of Federal Regulations, Title 49, Section 571.208. Defendant asserts
the pertinent statute is 106 pages long. It is not. The entire text of the safety standards may be,

1 but section 208, which includes the ones referring to seat belts, is quite short. The seatbelt law
2 referring to these standards simply states:

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4 (2) This section only applies to motor vehicles that meet the manual seat belt safety
5 standards as set forth in federal motor vehicle safety standard 208. This section does not
6 apply to a vehicle occupant for whom no safety belt is available when all designated
7 seating positions as required by federal motor vehicle safety standard 208 are occupied.

8 (3) Every person sixteen years of age or older operating or riding in a motor vehicle
9 shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

10 RCW 46.61.688. The statutory language referring the reader to the federal standards is nearly
11 identical to the language found objectionable in *Maxwell*.

12 Times have changed, however. The Maxwell holding occurred in 1994, and construed a
13 statute enacted in 1990. Washington's mandatory seatbelt law was enacted in 2003 and went
14 into effect this year. Since 1994, a citizen's ability to research and access governmental codes,
15 regulations and statutes has changed dramatically. Moreover, the regulation at issue here is not
16 complicated and is readily comprehended by a person of average intelligence.

17 My holding requires me to take judicial notice of the revolution in data sharing
18 technology that has taken place in recent years. Certainly, this revolution was well under way in
19 1994, at the time of the *Maxwell* decision, although it still retained a novelty for many citizens.
20 Today internet research is an accepted fact of life and the revolution fully realized. ER
21 201 provides the basic principles taking judicial notice:

22 (b) **Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable
23 dispute in that it is either (1) generally known within the territorial jurisdiction of the
24 trial court or (2) capable of accurate and ready determination by resort to sources
25 whose accuracy cannot reasonably be questioned.

(c) **When Discretionary.** A court may take judicial notice, whether requested or not.

(d) **When Mandatory.** A court shall take judicial notice if requested by a party and
supplied with the necessary information.

(e) **Opportunity To Be Heard.** A party is entitled upon timely request to an
opportunity to be heard as to the propriety of taking judicial notice and the tenor of the

1 matter noticed. In the absence of prior notification, the request may be made after
2 judicial notice has been taken.

3 (f) **Time of Taking Notice.** Judicial notice may be taken at any stage of the
4 proceeding.

5 I find that it is generally known within this territorial jurisdiction that public libraries are a part
6 of the data sharing revolution. They routinely offer users access to computers and the internet.

7 (The Supreme Court of the United States has recently ruled on the ability of public libraries to
8 restrict internet content on these computers when they are provided by federal grant money.

9 *United States v. American Library Assn., Inc.*, 539 U.S. ____, Slip Opinion 02-361 (2003).)

10 Public libraries are far more accessible to the general public than are law libraries where a person

11 is likely to find the U.S. Code of Federal Regulations. It is also apparent that internet research is

12 far easier than navigating a law library. A short introductory session is enough to teach one the

13 rudiments of internet research, whereas law students spend a significant part of their first year in

14 law school learning about the specialized library. Moreover, computer use and internet research

15 are parts of most, if not all, elementary school curricula. As the State has pointed out in its brief,

16 the federal safety standards are readily available through an internet search. Two well-

17 established internet search engines, at www.yahoo.com and www.google.com, allow the user to

18 input "federal motor vehicle safety standard 208". The first web site returned through each

19 inquiry is to the United States Department of Transportation Motor Vehicle Safety Standards.

20 By scrolling down the numerical list, one promptly comes to the seat belt standards. This

21 technique is "capable of accurate and ready determination", and no one is suggesting the

22 government website content includes an inaccurate recitation of the standards referred to by the

23 Washington State Legislature.

24 Washington State's Supreme Court has also noted that

1 background facts of which judicial notice can be taken are properly considered as part of
2 that statute's context because presumably the legislature also was familiar with them
when it passed the statute.

3 *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11 (2002). The legislature surely
4 was aware of the internet and its easy availability to the citizens affected by the seatbelt law. I
5 must also presume, without any contrary indication, that the legislature was aware of the
6 *Maxwell* decision and considered it in the drafting of the new statute. A review of the safety
7 standards reveals further that they are neither voluminous nor confusing. In fact, the very first
8 standard articulated by the USDOT states:
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10 Generally, the requirements are as follows:

11 Passenger Cars (Effective 1-1-68)

12 Lap or lap and shoulder seat belt assemblies for each designated seating position. **Except
in convertibles, lap and shoulder seat belt assemblies are required in each front
outboard seating position.**

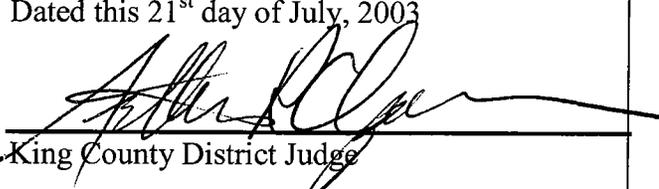
13 United States Department of Transportation Motor Vehicle Safety Standard No. 208 (emphasis
14 added). Later standards have added requirements for other seating positions in the vehicle and
15 for passive restraint systems and airbags. For drivers and front outside passengers, however, lap
16 and shoulder belts have been required for 35 years. It strikes me as remarkable that a driver of
17 common intelligence could be confused about a legislative requirement they actually be used.

18 The statute provides the requisite notice.

19 Conclusion

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21 Defendant has not met her burden of proof. The Washington mandatory seatbelt law is
22 not void for vagueness. The motion to suppress and dismiss is denied.

23 Dated this 21st day of July, 2003

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King County District Judge