

# HOUSE BILL REPORT

## HB 2565

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### As Reported by House Committee On:

Judiciary  
Transportation

**Title:** An act relating to mandating a twelve-hour impound hold on motor vehicles used by persons arrested for driving under the influence of alcohol or drugs or being in physical control of a vehicle while under the influence of alcohol or drugs.

**Brief Description:** Mandating a twelve-hour impound hold on motor vehicles used by persons arrested for driving under the influence.

**Sponsors:** Representatives Ericksen, Simpson, Smith, Van De Wege, Sells, Orwall, Goodman, Morrell and Moeller.

### Brief History:

#### Committee Activity:

Judiciary: 1/21/10, 1/28/10 [DPS];  
Transportation: 2/3/10 [DPS(JUDI)].

#### Brief Summary of Substitute Bill

- Requires that the vehicle operated by a person arrested for driving under the influence of drugs or alcohol be impounded for 12 hours, unless the operator is not the registered owner, in which case the vehicle may be released to the registered owner upon impound.
- Requires that the impounding police officer notify the vehicle operator of the time the vehicle may be released from impound.
- Releases a registered tow truck owner who complies with these impound requirements from liability for injuries or damages sustained from the operator's intoxicated state.
- Relieves the arresting officer and the officer's government employer from damages for loss of use of the vehicle for an improper impound, under certain conditions.

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## HOUSE COMMITTEE ON JUDICIARY

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Rebecca Jones (786-5793) and Trudes Tango (786-7384).

**Background:**

Vehicle Impounds.

Law enforcement officers may impound a vehicle for a number of reasons, including when the operator of a vehicle is arrested for driving under the influence of alcohol or drugs (DUI). There is, however, no requirement that officers impound a vehicle driven by a person arrested for DUI. A person may be arrested for DUI if the person drives or is in physical control of a vehicle with a blood alcohol concentration of .08 or higher, or while under the influence of alcohol or drugs.

When a vehicle is impounded, the impounding towing operator must notify the legal and registered owners of the impoundment, the right of redemption, and the opportunity for a hearing to contest the validity of the impoundment or the amount of towing and storage charges. An impounded vehicle may be redeemed only by the owner of the vehicle or a person who has permission of the owner, and upon payment of all costs associated with the impound.

The district or municipal court where the vehicle was impounded has jurisdiction over the hearings. If an impound is found proper, the impound costs and the court costs must be assessed against the person or persons requesting the hearing. If, however, the impound is found to be in violation of the impound chapter, the person or agency that authorized the impound is responsible for costs associated with the impound, the filing fee, and reasonable damages for loss of use of the vehicle. Where the impound arose from a violation of the law surrounding driving with a suspended, revoked, or invalidated license and the impound was found to be improper, the law enforcement officer and the government employing the officer are not liable for damages for loss of use of the vehicle if the officer relied in good faith and without gross negligence on the records of the Department of Licensing.

*All Around Underground v. The Washington State Patrol.*

In a 2002 Washington Supreme Court (Court) case, *All Around*, the Court held that a Washington State Patrol rule that mandated impoundment of the vehicle operated by a person arrested for having a suspended or revoked license exceeded its statutory authority because the impoundment statute requires officer discretion in whether or not to impound. While the case was decided on statutory grounds, the majority noted that courts have found a constitutional requirement to take into account reasonable alternatives to impoundment prior to impounding a vehicle. Under both the state and federal Constitutions, seizures of property must be reasonable.

### **Summary of Bill:**

The Legislature finds that protecting the public from an intoxicated person operating a vehicle is the primary reason for impounding the vehicle driven by a person arrested for DUI.

A law enforcement officer must impound the vehicle driven by a person arrested for DUI.

When the operator of the vehicle is arrested for DUI and is the registered owner of the vehicle, the impounded vehicle may not be redeemed until 12 hours after the vehicle arrives at the tow truck operator's storage facility. The law enforcement officer directing the impound must notify the operator of the 12-hour mandatory impound.

When the operator of the vehicle is arrested for DUI, but is not the registered owner, the registered owner may redeem the vehicle once impounded. The law enforcement officer directing the impound must notify the operator that the registered owner may redeem the vehicle at the storage facility.

Registered tow truck operators that release an impounded vehicle in compliance with these impound requirements are not liable for injuries or damages sustained by the operator or other parties that may result from the operator's intoxicated state.

Where an impound is deemed improper, the arresting officer and the officer's government employer are not liable for damages for loss of use of the vehicle if the officer had reasonable grounds to believe the operator was driving or controlling a vehicle while under the influence of alcohol or drugs.

The act is to be known as "Hailey's Law."

### **Substitute Bill Compared to Original Bill:**

The intent section is clarified through language changes and the addition of statistics. A change is made to clarify that when the operator of the vehicle is not the registered owner, the registered owner may redeem the vehicle upon impound. A section is added that relieves the arresting officer and the officer's government employer from damages for improper impound if the officer had reasonable grounds to believe the operator was driving while under the influence.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill provides for an automatic impound of the vehicle driven by a person arrested for DUI to prevent a person from getting back in his or her vehicle, driving again, and injuring someone. This is important to keep the streets safe. This bill is carefully crafted to account for the constitutional issues and there are no costs to local or city governments. This approach may be a way to keep the roads safer without impinging on the more protected property interest in a license. Allowing a person arrested for DUI to immediately return to or redeem their vehicle led to a situation where a driver already cited for DUI returned to the vehicle, drove while still impaired, and hit a person causing severe injuries. If this law had been in place when that incident occurred, the incident could have been avoided because the vehicle would not have been available to drive. This will keep offenders off the roads. Accidents due to DUIs have caused many deaths and even more injuries. This law is needed after the court decision that led to municipalities and law enforcement units ceasing to enforce their mandatory impoundment laws. Not all stations have mandatory booking for DUI offenders, so those arrested can be released. The court decision has resulted in a reluctance to impound for fear of liability. This bill gives guidance to law enforcement. Towing operators cannot know if a person who has come to collect their vehicle is still impaired, but this bill fixes that situation because the vehicle cannot be released for 12 hours. This bill increases revenue because it increases taxes. There are between 35,000 and 40,000 DUI arrests every year and approximately 8,000 impounds per year. The same person is often arrested two or three times. The fiscal note costs are due to waiting for the tow trucks and participating in more hearings because this would more than double the number of impounds performed. There could be savings from less liability and it only takes one life for a fiscal note to seem small.

(Opposed) The bill proposes punishment without conviction and without a reasonableness requirement. A 12-hour impound is like a mandatory fine. If the vehicle is a hazard then it is fine to impound it. There could be situations where the owner would be present at the scene of the arrest and not intoxicated, but the vehicle would still be impounded and the owner would have to pay the impound fees to get the vehicle. This does not prevent a driver from driving another vehicle. It is the driver who should be focused on, not the vehicle. Impoundment has to be reasonable and there is a question as to whether this would be constitutional.

**Persons Testifying:** (In support) Representative Erickson, prime sponsor; Hailey French; Bill Elfo, Whatcom County Sheriff and Washington Association of Sheriffs and Police Chiefs; Dan Johnson, Sr., Johnson's Towing; Jason Berry, Washington State Patrol; and Bill Hanson, Washington Council of Police and Sheriffs.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Clibborn, Chair; Lias, Vice Chair; Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Campbell, Dickerson, Driscoll, Eddy, Ericksen, Finn, Herrera, Johnson, Klippert,

Kristiansen, Moeller, Morris, Rolfes, Sells, Shea, Springer, Takko, Upthegrove, Williams and Wood.

**Staff:** Jerry Long (786-7306).

**Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Judiciary:**

No new changes are recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 after adjournment of the session in which the bill is passed

**Staff Summary of Public Testimony:**

(In support) The bill provides that a vehicle operated by a person that is arrested for driving under the influence (DUI) is impounded for a 12-hour period. The bill was prompted by a case in Whatcom County where a person was driven home after being stopped for DUI. The person then caught a cab to go back to the car to drive it home. On the way back to the person's home, the person struck a pedestrian. That case cost the Washington State Patrol (WSP) \$2.4 million in damages due to the fact that the person was able to access the vehicle and drive while still intoxicated. On average, there are 40,000 arrests for DUI each year. A DUI is not considered a criminal offense, so in most cases, due to no room in the jails, the person is allowed to leave once the breath test is completed. If this law had been in place, it would have prevented the incident in Whatcom County. Driving under the influence causes many accidents and deaths on the state's roadways. Presently there are 8,000 impounds per year. The updated fiscal note shows some impact for the WSP troopers when they incur overtime due to waiting for tow trucks and participation in additional hearings. It is estimated the WSP will impound approximately 11,500 additional vehicles each year. At this time the WSP is going to absorb the costs, but the agency will monitor the actual costs in the future.

(Opposed) The bill proposes punishment without conviction and without a reasonableness requirement. This does not prevent a person from driving another vehicle. The law should be focusing on the person and not the vehicle. There is a question on whether this law would be constitutional. The 12-hour impound is like a mandatory fine.

**Persons Testifying:** (In support) Representative Clibborn; Stu Halsan, Towing and Recovery Association; Marsha Masters, Mothers Against Drunk Driving; Jared Storer, Airport Towing; and Jason Berry, Washington State Patrol.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.