

# HOUSE BILL REPORT

## HB 1017

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### As Reported by House Committee On: Judiciary

**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 Goodman, Buys, Liias, Armstrong, Rolfes, Springer, Clibborn, Rodne, Finn, Seaquist, Moscoso, Probst, Kelley, Orwall, Fitzgibbon, Stanford, Kagi, Dammeier, Blake, Ladenburg, Pearson, Miloscia, Jacks, Van De Wege, Sells, Hurst, Smith and Moeller.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/12/11, 1/20/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Requires law enforcement to impound the vehicle operated by a person arrested for driving under the influence of alcohol or drugs, and requires that the vehicle be held for 12 hours if the person arrested is the only registered owner of the vehicle.
- Allows another registered owner, who was not the person arrested, to redeem the vehicle immediately after impound.
- Provides some immunity from liability for tow truck operators and law enforcement officers complying with the impound requirements.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

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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.*

**Staff:** 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). However, there is no statutory requirement that officers impound a vehicle driven by a person arrested for a DUI.

When a vehicle is impounded, the tow truck 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 a registered owner of the vehicle or a legal owner (such as a lien holder) or a person who has permission of a registered owner, and upon payment of all costs associated with the impound.

If, in a hearing contesting the impoundment, the impound is found to be in violation of the impound laws, 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. However, if the impound is based on driving with a suspended license and the impound is found to be improper, the law enforcement officer and the agency 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 Department of Licensing's driving records.

All Around Underground v. The Washington State Patrol.

In a 2002 Washington Supreme Court (Court) case, *All Around Underground v. The Washington State Patrol*, the Court held that a Washington State Patrol rule requiring impoundment of the vehicle operated by a person arrested for having a suspended license exceeded 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 opinion noted that courts have generally found that in order to satisfy constitutional requirements, impoundment must be reasonable, which includes taking into account whether reasonable alternatives to impoundment exist. Under both the state and federal Constitutions, seizures of property must be reasonable.

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**Summary of Substitute 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 a DUI.

When a law enforcement officer arrests a person for a DUI, the officer must impound the vehicle. When the operator of the vehicle is a 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, unless there are two or more registered owners. If there are two or

more registered owners or a legal owner, the registered owner or legal owner, who is not the operator of the vehicle, may redeem the vehicle upon impound.

When the operator of the vehicle is not a registered owner, the registered owner or a legal owner, who is not the operator of the vehicle, may redeem the vehicle once impounded.

The law enforcement officer directing the impound must notify the operator of the vehicle that a registered owner or legal owner may redeem the vehicle.

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 vehicle operator or by other parties that may result from the vehicle operator's intoxicated state.

If an impoundment is found 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 substitute bill allows a legal owner, who is not the arrested driver, to redeem the vehicle upon impound.

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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, except for section 6, which takes effect July 1, 2011.

**Staff Summary of Public Testimony:**

(In support) Drivers who are arrested for drunk driving sometimes get back in the car after being arrested and drive drunk again. It is a problem when drivers have continued access to the vehicles after arrest. This bill is intended to immobilize the car to give the driver time to get sober. This bill creates a good tool for law enforcement officers. Although cities and others have issues with the bill, those can be worked out.

(Opposed) Impoundment should not be mandatory. The bill removes all discretion and judgment from the officer. If there is a sober passenger, that person should be allowed to take the car. Mandatory impound impacts other family members of the driver. This bill is probably unconstitutional and creates revenue for tow truck companies.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Lee Reaves, Washington Council of Police and Sheriffs; and Rick Jensen, Washington State Patrol Troopers Association.

(Opposed) Steve Sarich, Sentry Medical; John Worthington, American Alliance for Medical Cannabis; and Shankar Narayan, American Civil Liberties Union of Washington.

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