

HOUSE BILL REPORT

HB 1017

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 Goodman, Buys, Lias, 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];

Transportation: 2/8/11, 2/22/11 [DP2S(w/o sub JUDI)].

Brief Summary of Second 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.

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,

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Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

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.

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.

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 two 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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 27 members: Representatives Clibborn, Chair; Liias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Eddy, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, Moeller, Morris, Moscoso, Overstreet, Reykdal, Rivers, Rodne, Rolfes, Ryu, Shea, Takko, Upthegrove and Zeiger.

Staff: Jerry Long (786-7306).

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

The second substitute bill allows that the police officer directing a vehicle to be impounded may place the completed impound order and inventory inside the vehicle and secure the vehicle by closing the windows and locking the doors before leaving if:

- the police officer has waited 30 minutes after a registered tow truck operator has been dispatched and has not arrived;
- the police officer is presented with exigent circumstances, such as being called to another incident; or
- due to limited available resources, the police officer is required to return to patrol.

A police officer directing that a vehicle be impounded under this circumstance and the government or agency employing the police officer will be released from any liability for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time that the registered tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the registered tow truck operator arrives.

The second substitute bill allows the police officer to release a commercial vehicle before impound has been directed to the owner of the vehicle, provided that the owner is not the driver or was not in the vehicle at the time of the stop and arrest. The police officer must attempt in a reasonable and timely manner to contact the owner of the vehicle and release the vehicle to the owner, if the owner is reasonably available.

The second substitute bill implements technical word changes: "operator" to "driver" and "law enforcement" officer to "police" officer.

Appropriation: None.

Fiscal Note: Available on original bill.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 6, which because of prior double amendments, takes effect July 1, 2011.

Staff Summary of Public Testimony:

(In support) If a person is arrested for driving under the influence, you do not want the person getting back into the vehicle and continuing to drive or have access to the vehicle until they are sober. Tow trucks normally arrive 15 minutes after they are dispatched. Interlock devices would be effective since the vehicle will not start unless the person is sober. It is a problem when drivers continue to have access to the vehicles after arrest.

In rural areas it may take a while for the tow truck to arrive, so an amendment is recommended that would allow a police officer to leave if they have another call or must return to patrolling if there are scarce resources on duty. The police officer and their employer should not be liable for damages that occur between the time an officer secures a vehicle and the tow truck arrives, under this condition. The other recommendation is a provision that if a vehicle is a commercial vehicle where the driver is not the owner, the police officer could contact the owner and release the vehicle to the owner.

This bill would help law enforcement limit liability by having the law that states law enforcement must impound the vehicle. There have been cases where the person has returned to the vehicle and has proceeded to drive still under the influence and the lawsuits have resulted in millions of dollars in settlements. The exposure is really great for law enforcement. Most of the jails are full, so placing the person in jail in many cases is not an option.

Law enforcement in Washington arrests 40,000 drivers per year driving under the influence.

Impoundment should not be mandatory. The bill removes all discretion and judgment from the police officer. Mandatory impound impacts other family members of the driver. This bill is probably unconstitutional and creates revenue for tow truck companies.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Stu Halsan, Towing and Recovery Association; and Jason Berry, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.