

# HOUSE BILL REPORT

## HB 2483

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to vehicle impoundment and redemption following arrest for driving or being in physical control of a vehicle while under the influence of alcohol or drugs.

**Brief Description:** Clarifying vehicle impoundment and redemption following arrest for driving or being in physical control of a vehicle while under the influence of alcohol or drugs.

**Sponsors:** Representatives Van Werven, Goodman and Ormsby.

#### **Brief History:**

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

Public Safety: 2/4/20, 2/6/20 [DPS].

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

- Removes provisions of current law requiring impoundment of the vehicle in every case in which the driver is arrested for impaired driving.
- Provides that, when an officer makes a discretionary decision to impound a vehicle in an impaired driving case, the current law procedures preventing the vehicle's redemption for 12 hours must be followed.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

In general, when a driver of a vehicle is arrested and taken into custody, the officer has the authority to take custody of the vehicle, at his or her discretion, and provide for its prompt removal to a place of safety. This may include having the vehicle impounded and towed.

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However, if the arrest is for an impaired driving offense, the arresting officer must impound the vehicle. Once impounded, a vehicle involved in an impaired driving offense cannot be redeemed from the towing company for a period of 12 hours.

There are certain exceptions that apply to the 12-hour hold. For example, a registered owner or legal owner who was not the driver of the vehicle may redeem the impounded vehicle once it arrives at the tow truck operator's storage facility without waiting 12 hours. If the vehicle is a commercial vehicle or farm transport vehicle and the owner of the vehicle was not the person driving, the arresting officer must attempt in a reasonable and timely manner to contact the owner and release the vehicle to the owner as long as he or she is reasonably available and was not in the vehicle at the time of the arrest.

The Washington State Supreme Court recently issued an opinion in *State v. Villela* in which it concluded that the mandatory impound of vehicles driven by suspected impaired drivers violates Article 1, section 7 of the state Constitution. An impound is constitutionally permissible only if, in the judgment of the impounding officer, impoundment is reasonable under the circumstances and there are no reasonable alternatives. In essence, to comport with the Constitution, the officer must make a discretionary case-by-case determination, and the impoundment must be the only reasonable option. The opinion did not, however, discuss or invalidate the 12-hour prohibition on redemption once the vehicle has been impounded.

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#### **Summary of Substitute Bill:**

Rather than requiring impoundment of the vehicle in every case in which a driver is arrested for impaired driving, the arresting officer may, at his or her discretion, direct the impoundment of the involved vehicle. When the arresting officer does direct the impoundment of the vehicle in an impaired driving case, the procedures preventing the vehicle's redemption for 12 hours must be followed.

An owner of a vehicle impounded in an impaired driving case who was not the driver may redeem the vehicle at any time after it has arrived at the towing facility, and does not need to wait 12 hours. When the involved vehicle is a commercial vehicle or farm transport vehicle and the owner was not the driver, prior to determining no reasonable alternatives to impound exist and directing impoundment of the vehicle, the officer must attempt to contact and release the vehicle to the owner, provided the owner is reasonably available and not under the influence of alcohol or any drug.

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

The substitute bill provides that, in cases in which the involved vehicle is a commercial or farm transport vehicle, the officer's obligation to attempt to release the vehicle to a non-driver owner is conditioned upon the owner not being under the influence of alcohol or drugs (in addition to being reasonably available).

**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) The underlying legislation that this bill amends, known as "Hailey's Law," passed in 2011 as the result of a tragic case. A person was caught driving drunk and was taken to jail, but the jail was overlooked and the officer brought the defendant home. She retrieved her car while still under the influence and hit and severely injured another person. This person spent months at the hospital and in a nursing home, had to use a wheelchair and a walker, and endured a hip replacement and other procedures. The perpetrator had two impaired driving offenses in one day. If this law had been in effect, that never would have happened.

The law was overturned by the court. This bill is an effort to reinstate the law, while satisfying the court's concerns over the seizure component. The officer has discretion as to whether or not to impound, but if they do, the vehicle must be held for 12 hours while the person becomes sober. The issues the underlying legislation was designed to address continue to persist. There was a recent case in Seattle in which an impaired driving offender retrieved their vehicle, which was not subject to mandatory impound, and reoffended in the same day, causing an accident. A vehicle in the hands of someone under the influence is a weapon. Separating people from their vehicles is the least that can be done.

This bill is a safety bill and is important to the towing industry. The towing industry is not getting a windfall from these cases and appreciates the reduction in the liability that can arise when a person attempts to redeem his or her vehicle while still impaired. Currently, vehicles are still being impounded, but not held for 12 hours. Tow companies are told to call the police when an intoxicated person tries to retrieve a vehicle, but police have more serious crimes to handle. In other cases, law enforcement are not impounding and vehicles are left in unsafe places on the road. Tow drivers are also put in dangerous situations when impaired drivers are released from custody and show up to a scene to take a car while still impaired.

(Opposed) None.

(Other) It was known that this was a grossly unconstitutional bill when it was considered nine years ago. There are tragic situations at issue, but people fought and died for the Constitution and against living in a fascist state. This bill will again abridge constitutional rights. The tone of this bill is that the Legislature intends to do the same thing they did last time, with a bad faith workaround of what is seen as a technical impediment. There should be a good faith determination that impound is reasonable under the circumstances, and the law should spell out a set of requirements that should be considered.

**Persons Testifying:** (In support) Representative Van Werven, prime sponsor; Hailey Huntley (French); Dan Johnson Sr., Industry Consultant; Matthew Porter, 24 Hour Towing and

Towing and Recovery Association of Washington; Emily Wade, Big D Towing, Day & Nite Towing, Jim's Northgate Towing, and Towing and Recovery Association of Washington; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Arthur West.

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