

RCW 79A.60.045 Vessel impoundment—Procedure—Forfeiture. (1)

Whenever the operator of a vessel is arrested for a violation of RCW 79A.60.040, the arresting officer, or another officer acting at the arresting officer's direction, has authority to impound the vessel as provided in this section.

(2) This section is not intended to limit or constrain the ability of local government from enacting and enforcing ordinances or other regulations relating to the impoundment of vessels for the purposes of enforcing RCW 79A.60.040.

(3) Unless vessel impound is required for evidentiary purposes, a law enforcement officer must seek a series of reasonable alternatives to impound before impounding the vessel. Reasonable alternatives to impound may include, but are not limited to:

(a) Working with the vessel's owner to locate a qualified operator who can take possession of the vessel within thirty minutes following the arrest of the vessel's operator and giving possession of the vessel to such a person;

(b) Leaving the vessel at a marina, dock, or moorage facility, provided that:

(i) The owner is present and willing to sign a liability waiver by which the owner agrees to waive any claims related to such an action against the law enforcement officer and the officer's agency and indemnify the officer and the agency against any claims related to such an action by any third party; and

(ii) The owner agrees to pay any applicable moorage charges or fees; and

(c) Towing the vessel to the closest boat ramp, marina, or similar type facility where the owner can meet the impounding officer within thirty minutes in order to:

(i) Moor the vessel by accepting any applicable moorage charges or fees; or

(ii) Take possession of the vessel if the owner was not present at the time of the arrest.

(4) For the purposes of this section, storing an impounded vessel may include, but is not limited to:

(a) Removing the vessel to and placing it in a secure or other type of moorage facility; or

(b) Placing the vessel in the custody of an operator licensed by the United States coast guard per 46 C.F.R. Sec. 11.482 to provide commercial assistance towing services in Washington state who must:

(i) Tow it to a storage facility operated by the towing entity for storage or to a moorage facility for storage; or

(ii) Tow it to a location designated by the operator or owner of the vessel.

(5) In exigent circumstances, an impounding officer may temporarily attach an impounded vessel to a mooring buoy or anchor the vessel to the bottom for up to twenty-four hours, after which time the impounding officer must move or cause the vessel to be moved to an appropriate facility for storage as outlined in subsection (4) of this section.

(6) If the impounding officer secures a vessel by placing it on its trailer, the officer, moorage facility representative, or commercial assistance towing service is authorized to detach the vessel's trailer from the vehicle to which it is attached, attach the trailer to an impounding vehicle, operate the vessel to load it on the

trailer, and then tow the vessel on its trailer to the storage facility.

(7) All vessels must be handled appropriately and returned in substantially the same condition as they existed before being impounded, unless forfeited pursuant to subsection (12) of this section. Except as provided in subsection (12)(b) of this section, all personal property in the vessel must be kept intact and must be returned to the vessel's owner or agent during the normal business hours of the entity storing the vessel upon request, provided the vessel owner, or the owner's agent, is able to provide sufficient proof of his or her identity.

(8) No moorage facility or vessel towing service provider is required to accept an impounded or otherwise secured vessel under this section for towing or storage. An impounding officer intending to secure a vessel by means of storing it at a moorage facility must have the permission of the owner or operator of the moorage facility prior to leaving the vessel at the facility. The impounding officer shall identify an authorized person on the vessel impound authorization and inventory form to represent the vessel impound facility. The officer must provide a copy of the vessel impound authorization and inventory form to the designated person representing the vessel impound facility along with the addresses of the registered and legal owners of the vessel. The moorage facility may require that the impounding officer's agency take responsibility for the foreclosure process set forth in subsection (12) of this section before they consent to accept an impounded vessel.

(9) (a) An impounding officer impounding a vessel pursuant to this section shall notify the legal and registered owner or owners of the impoundment of the vessel. The notification must be in writing and sent within one business day after the impound by first-class mail, digital transmission, or facsimile to the last known address of the registered and legal owner or owners of the vessel, as identified by the department of licensing, and must inform the owner or owners of the identity of the person or agency authorizing the impound. The impounding officer may serve the operator with the vessel impound authorization and inventory form at the time of impound if the operator is a legal or registered owner of the vessel. Personal service of the vessel impound authorization and inventory form meets the notice requirement of this subsection with respect to the legal or registered owner personally served. The notification must be provided on a vessel impound authorization and inventory form and include: (i) The name, address, and telephone number of the facility where the vessel is being held; (ii) the right of redemption and opportunity for a hearing to contest the validity of the impoundment; and (iii) the rate that is being charged for the storage of the vessel while impounded.

(b) A notice does not need to be sent to the legal or registered owner or owners of an impounded vessel if the vessel has been redeemed.

(c) The impounded vessel may not be redeemed by the operator within a twelve-hour period starting at the time of the operator's arrest. The vessel may be redeemed by or released to an owner or an agent of the owner that is not the operator within the twelve-hour period following arrest.

(10) A moorage facility that accepts a vessel impounded pursuant to this section for storage may charge the owner of the vessel up to one hundred twenty-five percent of the normal moorage rates of tenants

or guests in addition to a fee for securing the impounded vessel. A moorage facility must store the vessel in the least costly boat slip or storage area available that is appropriate for the vessel size. An entity that provides emergency vessel towing services that accepts a vessel impounded pursuant to this section for towing or storage, or both, may charge its normal towing and storage fees. The costs of removal and storage of vessels under this section is a lien upon the vessel until paid, unless the impoundment is determined to be invalid. The registered owner of a vessel impounded pursuant to this section is responsible for paying all fees associated with the towing and storage of the vessel resulting from its impoundment, except as otherwise provided in subsection (15) of this section.

(11) Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, the legal or registered owner of a vessel impounded and stored pursuant to this section may redeem the vessel by paying all towing and storage fees charged as allowed in subsection (10) of this section. Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, any person who shows proof of ownership or written authorization from the impounded vessel's registered or legal owner or the vessel's insurer may view the vessel without charge during the normal business hours of the entity storing the vessel. The moorage facility may request that a representative of the impounding agency be present during redemption. If requested, the impounding agency must provide a representative as requested by the moorage facility.

(12) If an impounded vessel stored pursuant to this section is not redeemed by its registered or legal owner pursuant to subsection (11) of this section within fifteen days of its impoundment, the entity storing the vessel, or the agency of the impounding officer, if required by the moorage facility under subsection (8) of this section, may initiate foreclosure. Forfeiture by the vessel owner is complete twenty days after mailing of the notice required by this subsection, unless within that time the owner, or any lienholder or holder of a security interest, pays all fees associated with the towing and storage of the vessel resulting from its impoundment. However, foreclosure may not be completed while a hearing under subsection (15) of this section to contest the validity of the impoundment is pending in district or municipal court or while any appeal of a decision of the district or municipal court on the validity of the impoundment is pending.

(a) In order to foreclose on the vessel, the foreclosing entity must mail notice of its intent. Such a notice must, at a minimum, state: (i) The intent of the foreclosing entity to foreclose on the vessel; (ii) that, when the foreclosure process is complete, the owner forfeits all ownership interest in the vessel; (iii) the right of the foreclosing entity to take possession of or dispose of the vessel upon completion of the foreclosure process; and (iv) that the owner, or other interested person or entity, may avoid forfeiture of the vessel by paying all fees associated with the towing and storage of the vessel resulting from its impoundment within twenty days of mailing of the notice. The notice must be mailed to the owner of the vessel at the address on file with the state with which the vessel is registered, or on file with the federal government, if the vessel is registered with the federal government, and any lienholder or secured interests on record. A notice need not be sent to the purported owner

or any other person whose interest in the vessel is not recorded with a state or with the federal government.

(b) Upon completion of the foreclosure process, the registered and legal owners of the vessel forfeit any and all ownership interest in it and the entity administering the foreclosure process must dispose of it through sale. The proceeds of a sale under this section shall be applied first to payment of the amount of reasonable charges incurred by the entity for towing, storage, and sale, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If the sale is for a sum less than the applicable charges, the foreclosing entity is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lienholder or secured party from asserting a claim for any deficiency owed the lienholder or secured party. If more than one thousand dollars remains after the satisfaction of amounts owed to the entity and to any owner or bona fide security interest, then the foreclosing entity must remit the moneys to the department of licensing for deposit in the derelict vessel removal account established in RCW 79.100.100. A copy of the forfeited vessel disposition report form identifying the vessel resulting in any surplus shall accompany the remitted funds. Transfer of ownership of the vessel after foreclosure must comply with RCW 79.100.150, when applicable. All personal property in the vessel not claimed prior to foreclosure must be turned over to the law enforcement agency that authorized the impoundment. The personal property must be disposed of pursuant to chapter 63.32 or 63.40 RCW, or as otherwise provided by law. Within fourteen days of the completion of the foreclosure process of a vessel pursuant to this subsection, the foreclosing entity shall send a forfeited vessel disposition report, together with a copy of the vessel impound authorization and inventory form and the notice of intent to foreclose, to the department of licensing so that the department may include documentation in the ownership records of the vessel. The vessel disposition information sent to the department of licensing on the forfeited vessel disposition report relieves the previous owner of the vessel from any civil or criminal liability for the operation of the vessel from the date of sale thereafter, and transfers full liability for the vessel to the party to whom the vessel is transferred by the foreclosing entity.

(13) Any individual or entity whose assistance has been requested by an impounding officer who in good faith provides trailering, towing, or secured or other type of moorage of a vessel impounded pursuant to this section is not liable for any damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel resulting from any act or omission in providing assistance other than for acts or omissions constituting gross negligence or willful or wanton misconduct, or for any damages arising from any act or omission committed during the foreclosure process.

(14) If a law enforcement officer impounds and secures a vessel pursuant to this section, the impounding officer and the government agency employing the officer are not liable for any damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel, or for any damages arising from any act or omission committed during the foreclosure process.

(15) Any legal or registered owner seeking to redeem an impounded vessel under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vessel was impounded

to contest the validity of the impoundment. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents, unless the impoundment was authorized by municipal agents. The municipal court has exclusive jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing must be made in writing per the instructions provided on the uniform vessel impound authorization and inventory form and must be received by the appropriate court within ten business days of the date that the vessel impound authorization and inventory form was mailed to or served on the registered or legal owner or owners of the impounded vessel. If the hearing request is not received by the court within ten business days of the sending or personal service of the notice of impoundment pursuant to subsection (9) of this section, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(a) Within five days after the request for a hearing, the court shall notify the operator of the impound facility, the registered and legal owners of the vessel, and the officer or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the petitioner may produce any relevant evidence that is admissible under court rules to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the fees established in subsection (10) of this section, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with subsection (10) of this section.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs must be assessed against the petitioner.

(e) If the impoundment is determined to be in violation of this section, then the registered and legal owners of the vessel bear no impoundment, towing, or storage fees, any security must be returned or discharged as appropriate, and the agency that authorized the impoundment is liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the moorage facility or vessel towing contractor against the agency authorizing the impound for the impoundment, towing, and storage fees incurred. In addition, the court shall enter judgment in favor of the petitioner for the amount of the filing fee required by law for the impound hearing petition. If an impoundment is determined to be in violation of this section, the impounding officer and the government agency employing the officer are not liable for damage to or theft of the vessel or its contents, or damages for loss of use of the vessel, if the impounding officer had reasonable suspicion to believe that the operator of the vessel was operating the vessel while under the influence of intoxicating liquor or any drug, was in physical control of the vessel while under the influence of intoxicating liquor or any drug, or was operating the vessel in a reckless manner, or if the impounding officer otherwise acted

reasonably under the circumstances in acting to impound and secure the vessel.

(f) If any judgment entered under this subsection is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment must read essentially as follows:

TO:

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$, in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys' fees and costs will be awarded against you under RCW if the judgment is not paid within 15 days of the date of this notice.

DATED this day of, (year)....

Signature

Typed name and address of party mailing notice

(16) By September 30, 2017, the department of licensing in collaboration with the commission shall create the following forms for use in the enforcement of this section:

(a) A vessel impound authorization and inventory form. This form must include sections for the impounding officer to record the addresses of the registered and legal owners of the vessel and the designated individual that will act on behalf of the impound facility; and

(b) A forfeited vessel disposition report form.

(17) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Impound" means to take and hold a vessel in legal custody.

(b) "Legal owner" means a person having a perfected security interest or a registered owner of a vessel unencumbered by a security interest.

(c) "Moorage facility" includes a private moorage facility as defined in RCW 88.26.010, a moorage facility as defined in RCW 53.08.310, or a moorage facility owned or operated by the agency of the arresting officer.

(d) "Registered owner" or "owner" means the person whose lawful right of possession of a vessel has most recently been recorded with the department of licensing.

(e) "Secure moorage" is in-water moorage or dry storage at a moorage facility in a location specifically designated for the moorage of vessels and in a location where access is controlled or security is provided.

(f) "Vessel" includes any vessel as defined in RCW 79A.60.010 and includes any associated trailer or towing device used to transport the vessel if it is included in the impoundment. [2017 c 247 s 1.]