



WASHINGTON STATE  
UNIVERSITY

DIVISION OF GOVERNMENTAL  
STUDIES AND SERVICES



**Report:**  
**IDENTIFYING, TOWING, AND IMPOUNDING VEHICLE  
RESIDENCES: AN ASSESSMENT AND RECOMMENDATIONS  
POST *CITY OF SEATTLE V. LONG***

**ESSB 5689**

**December 2022**

## ACKNOWLEDGEMENTS

### About the Division of Governmental Studies and Services

The Division of Governmental Studies and Services (DGSS) is a social science research and outreach unit jointly sponsored by Washington State University (WSU) Extension and the College of Arts and Sciences at Washington State University. DGSS has served Washington State University's land grant mission of access, outreach, and education to bring the practical benefits of research to communities in Washington State for over 55 years. Through this engagement DGSS has developed a reputation for robust applied research and serves as an important link that leverages the University's resources for public benefit, through applied social science research, technical assistance, and training for government and non-government organizations throughout the Pacific Northwest. DGSS engages students, at both the graduate and undergraduate level in applied research projects whenever possible. Students provide innovative insight and are able to apply theoretical classroom learning to enhance their education experience and provide a service to entities with which DGSS partners.

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### About the Workgroup

Engrossed Substitute Senate Bill 5689 (ESSB 5689) directed Washington State University (WSU) to secure relevant stakeholders from each of six areas: 1) vehicle resident advocates, 2) nonprofit legal services organizations, 3) tow truck operators or associations, 4) municipal court representatives, 5) fire chiefs and marshals, 6) and representatives from cities and counties. WSU successfully secured a 10-member stakeholder group with representation from each of these areas.

## EXECUTIVE SUMMARY

This report, prepared by Washington State University's (WSU) Division of Governmental Studies and Services (DGSS), was written at the request of the Washington State Legislature as laid out in Section 109, Subsection 2 of Engrossed Substitute Senate Bill 5689 (ESSB 5689). The legislature directed WSU to convene a working group to examine the implications of the Washington Supreme Court's findings in *City of Seattle v. Long*. Specifically, the legislature requested that WSU make recommendations for amending chapter 46.55 RCW, which regulates the towing and impound of vehicles. This request came after the Supreme Court found, in part, that 1) vehicles used as a primary residence constitute homesteads and are thus protected under Washington's Homestead Act, and 2) that impound fines/fees may be deemed excessive by courts when individuals lack the ability to pay.

To examine the implications of the *Long* case, WSU convened representatives from several key areas and organizations, to include vehicle resident advocates, nonprofit legal services organizations, tow truck associations, municipal court representatives, fire chiefs and marshals, and Washington cities and counties. The resulting workgroup met at least a dozen times between the second week of August and the beginning of December of 2022 to address the specific concerns identified by the legislature in ESSB 5689.

Below is a summary of key recommendations reached by the workgroup, as they pertain to chapter 46.55 RCW and vehicle residency more generally:<sup>1</sup>

- As a general approach to vehicle residences, when they do not pose safety concerns, towing and impound should be used as a last resort.
- To assist with the identification of vehicles used as residences, law enforcement and tow operators should adopt and use the *Vehicle Residence Identification Criteria* described in this report.
- To further assist with identification of vehicle residences, consider the feasibility of providing voluntary, discrete ID stickers.
- Chapter 46.55 RCW should adopt language specifically allowing courts to authorize release of vehicle residences via impound hearings.
- Procedures involving impound hearings should be modified to:
  - Allow courts to consider late requests for a hearing when the case involves a vehicle residence;
  - Allow courts to set aside or postpone the impound hearing if vehicle residents do not have sufficient proof of ownership;
  - Allow courts to postpone the impound hearing in cases where the claimed vehicle resident files for a quiet title under RCW 46.12.680;

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<sup>1</sup> It is important to note that the workgroup consisted of members with diverse backgrounds who represented different areas of interest. Thus, while a majority of workgroup members supported the recommendations in this report, not all recommendations received full consensus of the group. Moreover, the contents of this report reflect the DGSS Project Team's understanding, interpretation, and assessment of the content provided by numerous workgroup meetings held to address the potential implications of *City of Seattle v. Long*.

- Require the DOL to adopt rules making impound hearing forms available in languages other than English and generally more accessible and informative; and
  - Require impound hearings that involve vehicle residences to be scheduled within five business days.
- In cases involving vehicle residences, public auction procedures should be modified to retain the vehicle for a minimum of 60 days when no attempt to redeem the vehicle has been made, after which it may be considered abandoned and subsequently auctioned.
- During impound hearings, courts should determine individuals' ability to pay impound fines/fees based on criteria established by *Washington v. Blazina* (2015)
- When courts deem impound fines/fees excessive due to individuals' inability to pay, the difference should be paid by the municipality/agency that authorized the impound and municipalities/agencies should be directly subsidized by state funds for this purpose. Reimbursement should be limited to actual costs associated with the impound.
- Chapter 46.55 RCW should adopt language allowing courts to release personal belongings from impounded vehicle residences.
- The state, counties, and municipalities should expand short-term and long-term parking options for vehicle residences.
- Municipalities should avoid impounding vehicle residences for unpaid parking tickets and/or expired registration.

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## INTRODUCTION

### Nature and Extent of Vehicle Residency in Washington

Homelessness in Washington state represents an issue of significant concern, especially since the number of residents experiencing homelessness is on the rise (Ivey, 2018). Coupled with increased homelessness has been the rise of vehicle residency, whereby many Americans live in their vehicles as a primary residence, often for numerous reasons. As noted by Pruss and Cheng (2020), a vehicle residence may represent “vital remaining assets after a loss of housing from personal catastrophe, displacement, or natural disaster” (p. 87). A vehicle residence may also represent a means of avoiding the street and/or public shelters where conditions are not always favorable. For example, shelters may be in unsafe areas and may have strict curfews and rules, making vehicle residences a more attractive option to the unsheltered (Donley & Wright, 2012; Giamarino et al., 2022; Wakin, 2014; Wasserman, 2014). Shelters may also be inaccessible to those with family and/or pets, as well as those with substantial belongings. Moreover, the recent Covid-19 pandemic may influence the decision to avoid shelters (Moody, 2020). Consequently, a vehicle residence may present a more stable living arrangement. For others, a vehicle may represent the only viable living arrangement due to difficulties and barriers associated with renting or purchasing property (Pruss and Cheng, 2020), and these barriers may grow more challenging given the rising cost-of-living and homes in the United States (Federal Housing Finance Agency, 2022).

The full extent of individuals who reside in their vehicles in Washington State is unclear due to lack of available data. Within specific jurisdictions, however, researchers have been more successful in their efforts to study and track vehicle residency. In Seattle, for example, the proportion of homeless who live in vehicles has been on the rise. As of 2018, this living arrangement accounted for approximately 50 percent of the unsheltered homeless population, up from approximately 33 percent a decade earlier (All Home King County, 2020; Pruss, 2019). In 2020, Seattle/King County reported that 2,748 individuals were living in their vehicles. Given that homelessness has reached crisis levels in Washington state, and that vehicles offer a form of secure shelter for a segment of the homeless population, the number of vehicle residents is likely to remain elevated within the state.

### *City of Seattle v. Long*

#### Brief Overview

In 2021, the Washington Supreme Court ruled partly in favor of Steven Long, whose vehicle residence was impounded by the city of Seattle for violating municipal parking code. When Long’s truck developed mechanical problems, he parked on a gravel lot owned by the city. Since the vehicle was no longer running, his vehicle remained on the lot for approximately three months at which point the city impounded the vehicle. Long had been residing in his vehicle and working as a tradesman. As a result, when Long’s truck was towed, he lost his primary shelter along with the tools that he used to earn a living.

Long requested an impoundment hearing to challenge the parking infraction. The magistrate substantially reduced the charges associated with the impoundment and set up a payment plan of \$50 per month. Long agreed to the payment plan to secure his truck and prevent it from being sold at auction. Long appealed the municipal court's finding, arguing in part, that the impoundment constituted a violation of state and federal excessive fines clauses as well as the state's Homestead Act. Washington's Homestead Act protects residents and their families from the possibility of losing their primary residence because of financial misfortune.

Long's case eventually reached the Washington Supreme Court which issued, in part, the following key findings: 1) because Long's truck served as his primary residence it automatically constituted a homestead and it was not necessary for Long to declare his vehicle a homestead to secure the afforded protections, 2) although the city of Seattle impounded Long's homestead, they did not violate the Homestead Act since the city did not attempt to collect on Long's debt by auctioning his truck, 3) the payment plan imposed was constitutionally excessive given that a) the offense was minor in nature, b) the offense was not related to any other criminal activity, c) the extent of harm caused was minimal (Long was not parked in a high demand area), and d) Long had little ability to pay the \$50 per month.

Within their ruling, the Washington Supreme Court also emphasized several additional key points. First, they noted their findings did not mean that that cities could not impound vehicles or impose fees associated with towing. Rather the court indicated that the excessive fines clause prohibits the use of punitive fines that will deprive an individual of their livelihood and further noted that municipal courts, via impoundment hearings, are the appropriate venue for undertaking this inquiry. Second, and related to the first point, the court emphasized the need of municipal courts to assess individuals' ability to pay when determining whether the fines and fees are excessive in accordance with the Eighth Amendment. Third, the court implied that while the Homestead Act was not violated since Long had already retrieved his vehicle, vehicles used as a primary residence—which constitute homesteads—cannot be sold at auction to satisfy impound debts.

#### Potential Implications

There are many possible implications of the *City of Seattle v Long* case. These include implications surrounding the towing, impounding, and potential auction of vehicle residences. The towing and impounding of vehicles is regulated by chapter 46.55 RCW, which may require changes to remain compliant with the Washington Supreme Court's ruling. Consequently, the Washington State Legislature recently enacted Section 109 of Engrossed Substitute Senate Bill 5689 to address this issue, as discussed below.

#### Legislative Authorization and Requirements of this Study

Engrossed Substitute Senate Bill 5689 (ESSB 5689) called for Washington State University "to convene a work group to review the legal findings and holdings by the Washington Supreme Court in *City of Seattle v. Long* and to make recommendations in amending provisions concerning the towing and impound of vehicles under chapter 46.55 RCW" (2022). The

workgroup is required to address the following tasks, per Section 109 of ESSB 5689:

1. The need to identify additional parties authorized to receive notice of and redeem impounded vehicles used as residences;
2. The most effective and appropriate methods to identify vehicles used as residences before and after impound;
3. The need to modify impound notice periods and forms;
4. The need to modify impound hearing and public auction procedures and timelines for vehicles used as residences;
5. The need to modify retention policies and timelines concerning impounded vehicles used as residences;
6. Which factors and considerations are appropriate for courts to evaluate when determining if towing and storage fees are excessive;
7. The appropriate persons or entities and process to reimburse tow truck operators when excessive towing and storage fees are reduced;
8. Any other necessary procedural modifications or protections required, including homestead act protections, concerning impounded vehicles used as residences; and
9. Any other technical amendments or policy considerations discussed by the work group (2022).

## AN ASSESSMENT OF VEHICLE RESIDENCES IMPOUNDED UNDER CHAPTER 46.55 RCW

Below is an assessment of each task identified by Engrossed Substitute Senate Bill 5689 as provided by Washington State University's Division of Governmental Studies and Services and the requisite workgroup convened to study the impounding of vehicle residences under chapter 46.55 RCW.

### Appropriate Methods to Identify Vehicle Residences

Currently, chapter 46.55 RCW does not define vehicle residences or identify how law enforcement or towing operators would identify vehicle residences in the field. This section provides a mechanism by which this can be accomplished, both pre-impoundment and post-impoundment.

#### Pre-Impoundment

The ability to positively identify vehicles being used as a primary residence is not always clear and poses challenges for towing operators in the field. In perhaps the simplest of cases, towing operators should presume a vehicle to be a residence if an occupant claims to be living in the vehicle as a primary residence, pursuant to *City of Seattle v Long* and its application of the Homestead Act. Yet, there are many circumstances in which a potential vehicle residence will be unoccupied at the time of impoundment, requiring towing operators and law enforcement to make determinations in their absence. As described further below, there are numerous reasons for municipalities to impound vehicle residences *only as a last resort*. Thus, the ability for law enforcement and/or tow operators to identify vehicles that are likely residences is critical.

The workgroup members carefully examined this issue of identifying likely vehicle residences and recommend that law enforcement and towing operators rely on a set of criteria for making



this determination in the field.<sup>2</sup> The criteria were developed by Pruss and his colleagues (see Pruss, 2019) and subsequently adopted by King County for enhancing the accuracy of their annual census of people experiencing homelessness. Consistent with this approach, law enforcement and towing operators should identify whether *a minimum of three of the following conditions* apply to a vehicle as stated by Pruss (2019):

1. The view through windows from front to back is blocked.
2. The view through at least one side window is blocked.
3. There is unfrozen condensation on the inside of windows.
4. At least one window is partially open.
5. Items that indicate residence are attached to the outside of the vehicle, such as generators, bicycles, or storage containers.
6. A large volume of items is stored in plastic bags inside or next to the vehicle.

*If three or more of the conditions above are present*, the vehicle should be presumed to be a residence that will carry Homestead Act protections, which automatically apply to vehicles lived in as a primary residence. These criteria may be referred to as *Vehicle Residence Identification Criteria*.

The workgroup held a widely agreed upon opinion that vehicle residences should only be impounded as a last resort. This conclusion was reached for a number of reasons, to include, at minimum, the following: 1) impounding vehicle residences greatly disrupts the lives of people who occupy them (they immediately lose access to nearly all personal possessions as well as their only shelter), 2) vehicle residents often lack the resources to efficiently respond to an impoundment (redeeming the vehicle is a challenge that may require a court hearing), 3) vehicle residents often lack the financial resources to pay the fees associated with towing and impoundment, 4) towing operators have limited space in their lots to hold vehicle residences, 5) vehicles identified as residences may need to remain in tow lots for much longer periods of time than vehicles not used as residences, incurring greater costs. To reduce the likelihood of impounding vehicle residences, the workgroup considered whether, through an appropriate state agency (e.g., DOL), discrete stickers could be issued to vehicle residents for the purpose of *voluntarily* identifying their vehicle as a primary residence. Though all workgroup members did not favor ID stickers, the general recommendations were as follows:

1. Determine vehicle residents' perspective about using official identification stickers to ensure such a strategy does not incur risk for users.
  - a. The workgroup recommends ensuring to the extent possible, through feedback from vehicle residents, that ID stickers do not increase risk of theft.
  - b. The workgroup recommends ensuring to the extent possible, through feedback from vehicle residents, that ID stickers will not increase safety risks to vehicle residents by formally exposing their vehicles as residences.

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<sup>2</sup> It should be noted that these criteria on their own cannot guarantee that a vehicle is being used as a primary residence, and only serve as a guide for determining which vehicles are *likely* residences subject to Homestead Act protections.

2. If vehicle residents are supportive of ID stickers, use this feedback to investigate the potential creation of an ID sticker.
3. ID stickers should be optional (not mandatory) and low barrier (simple to acquire).
4. Consistent with the Long case, ID stickers would not be necessary for asserting protections stemming from the Homestead Act.

#### Post-Impoundment

If a vehicle has been impounded prior to identifying whether it *likely* constitutes a vehicle residence, as described above, the following recommendations may be considered:

1. Require tow operators to inquire whether the vehicle owner lives in the vehicle if/when an individual begins the process of redeeming their vehicle (during first point of contact with the respective tow yard, be it in-person or via phone). Consistent with the Washington Supreme Court's application of the Homestead Act, homestead protections are automatic, and a claimed residence is presumed valid until challenged in a court of general jurisdiction.

#### Modifying Impound Procedures for Vehicle Residences

Currently, chapter 46.55 RCW establishes numerous impound procedures that may need to be altered in the case of vehicle residences. The sections that follow address these procedures and provide recommended changes where necessary.

#### Authorizing Additional Parties to Receive Notice of Impoundment

At present, RCW 46.55.110 requires the legal and registered owners of a vehicle to be sent notification of the impoundment by first class mail. This notification is to be mailed within 24 hours.

The workgroup discussed concerns with this notification process. If a vehicle is being used as a primary residence, the resident is unlikely to receive any mailed notification in practice since the individual may lack a deliverable address. In addition, vehicle residents may not be on record as the legal or registered owner of their vehicle residence, in which case the notification would not be directed toward them. The workgroup examined whether there may be additional mechanisms for contacting vehicle residents in the event their home is impounded. The goal was to find a method to notify these individuals more quickly and effectively. Yet, the practical challenges associated with achieving this goal precluded a workable solution. Vehicle residents often lack consistent phone service and/or consistent phone numbers; consequently, developing a system for contacting based around some sort of telephone notification would likely be ineffective.

As a result, the workgroup does not recommend that any additional parties must be notified beyond those currently specified in chapter 46.55 RCW. Some workgroup members however, recommended the need to further examine the possibility of notifying social services and

outreach groups (e.g., Seattle’s Scofflaw Mitigation Team) that may be providing support services to vehicle residents when a vehicle identified as a residence is impounded.

#### Authorizing Additional Parties to Redeem Vehicle Residences

At present, chapter 46.55 RCW allows an impounded vehicle, which may include a vehicle residence, to be redeemed by the following entities:

1. The legal owner of the vehicle
2. The registered owner of the vehicle
3. A person authorized, in writing, by the registered owner of the vehicle
4. The vehicle’s insurer
5. A third-party insurer for the purpose of vehicle repair (with owner’s consent)
6. A person who the towing operator determines to have permission from the registered owner
7. A person with written proof of purchase of the vehicle from the registered owner

The workgroup determined that vehicle residents may not always meet the requirements above, and therefore, may not be able to redeem their vehicle residence. For example, vehicle residents may have purchased a vehicle, yet may not have registered it in their name. In addition, a vehicle title and/or bill of sale may not be readily available to support the purchase. In cases like these, the towing operator cannot release a vehicle residence to the resident claiming ownership. Consequently, the workgroup recommends the following action:

1. Include language in RCW 46.55.120 explicitly stating that vehicles may be redeemed by a “person who is authorized by a court.” See Appendix A for potential language to accomplish this.
2. Include language in RCW 46.55.120 explicitly stating that tow operators should give written notice of the right to an impound hearing to *any* person who attempts to redeem the vehicle.

Other options for consideration, which did not reach full consensus by the workgroup, include the following:

1. Include a provision in RCW 46.55.120 that allows tow operators to release vehicle residences to persons who are not the legal or registered owner and who have not been authorized by a court, under specific conditions that must be met. See Appendix A for detailed language explaining these conditions and sample language that could be incorporated into RCW 46.55.120.
2. As suggested by the workgroup’s legal services representative, allow vehicle residents, who present the appropriate documentation of vehicle ownership, to redeem their vehicle residence without payment.
  - a. These individuals would then be required to request/attend an impound hearing where the fines/fees may be reduced based on an inquiry into

the individual's ability to pay, as required by the *Long* decision (and described in this report).

#### Impound Notice Periods and Forms

RCW 46.55.110 requires that legal and registered owners of unauthorized vehicles be notified of impoundment by mail within 24 hours (once law enforcement provides the tow operator with the necessary contact information). The workgroup did not identify needed changes to this procedure to accommodate *City of Seattle v. Long*.

#### Impound Hearing and Timelines

Chapter 46.55 RCW requires tow operators to provide individuals who seek to redeem an impounded vehicle with written notice of their "right of redemption and opportunity for a hearing." Tow operators must also provide, along with this written notice, the form used to request a hearing to contest the impoundment and/or associated fees. To request a hearing, the form must be received by the court within 10 days, but also at least 5 days prior to the date the vehicle shall be auctioned. If the request is not received within this timeframe, the hearing is waived. During the hearing the court must determine whether the impoundment and fees were proper.

The workgroup considered these current requirements and found that several changes may be needed to address the challenges faced by vehicle residents who encounter the impoundment of their vehicle residence, and in light of *City of Seattle v. Long*. Below are recommended changes for consideration:

1. Allow courts to consider late requests for a hearing. This can be especially useful for vehicle residents who are traumatized by the loss of their vehicle home as well as most or all of their personal belongings which are often held in the vehicle. In some cases, vehicle residents find it challenging to navigate the legal process and often need assistance to do so.
2. Allow courts to set aside or postpone the impound hearing if vehicle residents do not have sufficient proof of ownership. This can facilitate the process of obtaining required documents from DOL or otherwise. The workgroup suggested that for good cause shown, courts should be able to continue a hearing for no more than 15 days, unless extenuating circumstances exist. Language that could potentially be added to RCW 46.55.120 can be found in Appendix A.
3. Allow courts to postpone the hearing in cases where the claimed vehicle resident files for a quiet title under RCW 46.12.680.
4. Require the DOL to adopt rules making impound hearing forms available in languages other than English and generally more accessible and informative.
  - a. Adopt language that is more accessible and more clearly stated
  - b. Incorporate information about legal services and resources for assistance
  - c. Incorporate language about potentially reducing fines for those that lack ability to pay

5. In cases of financial hardship, encourage courts to use their existing discretion to waive the hearing fee for vehicle residents.
6. Create an expedited hearing timeline for cases involving vehicle residences that have not yet been redeemed at the time of the hearing request. In such cases, courts should schedule impound hearings as soon as reasonably possible within five business days.

#### Public Auction Procedures and Retention Timelines

RCW 46.55.120 provides regulations for the public auction of abandoned vehicles, which may include vehicle residences. Once an impounded vehicle has been in the possession of a tow operator for 120 consecutive hours, it meets the definition of an “abandoned vehicle” according to RCW 46.55.010. After an additional 15 days elapse, unclaimed vehicles “shall be sold at public auction” in accordance with procedures described in RCW 46.55.130.

The workgroup discussed this timeline for auctioning “abandoned vehicles” and has concluded that vehicle residences should be afforded additional protections because of *City of Seattle v. Long*, and its application of the Homestead Act to vehicles lived in as primary residences. To facilitate this, chapter 46.55 RCW could include a *new section* outlining additional protections, to include an extended timeline leading up to the public auction of a vehicle that was used as a primary residence. The workgroup generally agreed that if a vehicle is claimed to be used as a primary residence, or if the state or its agents, or a municipality or its agents, receives information or observes indicia that a vehicle is being used as a primary residence, then additional time should be required to elapse before a vehicle residence is determined to be an “abandoned vehicle” and proceed toward public auction (public auction requires notification and 15 additional days per RCW 46.55.130). How much additional time should be afforded was a subject of debate among the workgroup since longer time periods may incur greater costs to tow operators (who must store vehicle residences on their lots), as well as municipalities (who may be responsible for paying the contracted rates with tow operators for these extended periods).

The workgroup was not able to reach full consensus, but the majority of the workgroup recommended that in the event a vehicle is identified as a vehicle residence (as described in the paragraph above), then it should only proceed to auction if a minimum of 60 days have elapsed since the tow operator was notified the vehicle is likely vehicle residence, and no impound hearing has been requested or attempt has been made to arrange redemption with the tow operator. After 60 days has elapsed, the vehicle residence may then be defined as an “abandoned vehicle,” at which point it shall be auctioned in accordance with RCW 46.55.130. See Appendix B for sample language that may be incorporated into chapter 46.55 RCW to accomplish this.

Of importance, the workgroup noted and discussed that the Homestead Act, as currently written, does not allow for the presumption that a homestead is abandoned unless it has been continuously vacant for a minimum of 6 months (see RCW 6.13.50). Thus, it is possible that the

legislature would need to adjust the language in the Homestead Act to accommodate this recommendation.

### Determining if Towing and Storage Fees are Excessive Based on “Ability to Pay”

*City of Seattle v. Long* established that during impound hearings, courts must consider whether the associated fees are excessive. As described at the outset of this report, the Washington Supreme Court identified key factors used to make this determination. These included factors related to the seriousness of the offense as well as the individual’s ability to pay. If the offense is relatively minor (e.g., minor infraction, little harm caused, unconnected to other criminal activity), as is often the case with the impoundment of vehicle residences, the ability to pay becomes central to determining whether fines/fees are excessive, and potentially in violation of the Eighth Amendment. As reflected below, the workgroup spent considerable time and effort examining this issue, along with the related issue of which entities should be responsible for reimbursing tow operators when courts determine fees to be excessive. The workgroup also noted that fines/fees may be determined to be excessive, in accordance with the Long case, *not* due to inappropriate assessments made by tow operators, but due to an individual’s personal circumstances that cause their inability to pay such fines—a determination that must be reached by courts (not tow operators), during the impound hearing, after fines have been assessed.<sup>3</sup>

#### Factors to be Considered by Courts when Determining Ability to Pay

When assessing ability to pay, the workgroup identified that existing procedures and case law provide a framework for making this determination on a case-by-case basis. Specifically, the workgroup drew upon the Washington Supreme Court ruling in *Washington v. Blazina* (2015) as guidance. In this case, trial judges ordered that defendants Blazina and Paige-Colter pay discretionary legal financial obligations (LFOs). The court records did not reflect that either trial judge considered, via inquiry, the defendants’ ability to pay. Upon review of this case, the Washington Supreme Court ruled that courts must conduct an individualized inquiry into a defendant’s ability to pay LFOs. It was further determined that courts must take into consideration factors such as *whether a defendant is incarcerated* and the *nature of their existing debts* (to include restitution orders), when assessing ability to pay.

Also of significance, the Washington Supreme Court pointed to court rule GR34 as a source for guidance in making determinations regarding ability to pay. GR34 is used for determining whether filing fees and surcharges should be waived in cases where defendants meet indigent status. These include, in part, the following criteria:

1. The individual is receiving assistance from a needs-based program such as:
  - a. Federal Temporary Assistance for Needy Families (TANF)

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<sup>3</sup> To further elaborate, when courts determine such fines to be excessive, this does not mean that tow operators charged fees that were out of compliance with established and permitted rates. Even when tow operators assess fines in accordance with WA statutes and the rates established/defined by the WSP, they may be determined to be excessive, on a case-by-case basis, when courts find that individuals lack the ability to pay such fines.

- b. State-provided general assistance programs for the unemployable (GA-U and GA-X)
  - c. Federal Supplemental Security Income (SSI)
  - d. Federal poverty-related veteran's benefits
  - e. Food Stamp Program (FSP)
2. The individual's income is at or below 125 percent of the federal poverty level
  3. Other compelling circumstances exist that determine an individual's ability to pay
  4. An individual is represented by a qualifying legal service provider (QLSP) who screened the individual and found them eligible to receive their services (which are directed toward assisting low-income individuals)

Thus, the workgroup recommends that when judges assess an individual's ability to pay during impound hearings, they draw on the factors *similar to those* identified in *Washington v. Blazina* and court rule GR34 referenced by the Washington Supreme Court in their analysis of the *Blazina* case.

#### Reimbursing Towing Operators when Excessive Fees are Reduced

The reimbursement of tow operators when excessive fees/fines are reduced presents challenges. On the one hand, the workgroup recognized that vehicle residents will often lack the financial means to pay fees and fines associated with an impound and acknowledged that such fees and fines could be a substantial hardship on these individuals. In this sense, *City of Seattle v. Long* may offer welcome relief for a segment of the population that is under resourced and otherwise vulnerable. At the same time, the workgroup also acknowledged that the reimbursement of tow operators will require the financial obligation to be shifted elsewhere. In principle, when impounds are authorized by the state or its agents, or a municipality or its agents, then the financial obligation stemming from reduced fees could be transferred to the person or agency that authorized the impound.

The workgroup specifically discussed the challenges associated with requiring municipalities to reimburse tow operators when impound fees are found to be excessive for individuals and are reduced. Members of the workgroup pointed out that, especially in smaller municipalities, funds may not be available to cover such costs and would place an unrealistic burden on these entities. In addition, larger municipalities, particularly those with higher numbers of vehicle residents, may also lack necessary funds to absorb such expenses. This raised a concern that municipalities with financial constraints might not be able to take action to impound vehicle residences that pose concerns, be they safety-related or otherwise (even when limiting this practice to a last-resort approach). In addition, since tax-payer funds are the likely source of reimbursement, the workgroup discussed the need for re-examining what is reasonable for tow operators to charge when impounding vehicle residences.

Although the workgroup could not establish full consensus on the best mechanisms for reimbursing tow operators, the following were identified as potential options to address the concerns noted above:

1. Establish a statewide fund to reimburse those agencies who authorize impounds on behalf of the state or its municipalities for the purpose of reimbursing tow operators when a vehicle residence is impounded, and the associated fees/fines are found to be excessive and subsequently reduced by district or municipal courts.
2. Consider utilizing the existing state fund established for disposing of abandoned recreational vehicles to support reimbursements to tow operators (see RCW 46.68.175).
3. When fees/fines are determined to be excessive by a district or municipal court, in cases involving vehicle residences, limit the amount reimbursed to no more than the tow operator's actual costs for the services provided.

### Private Impounds

The workgroup also discussed the related case of private impounds. Although chapter 46.55 RCW deals primarily with public impounds (those carried out on behalf of the state or its municipalities), the workgroup noted that impounds ordered by private property owners also present challenges for vehicle residents. There was not consensus about what mechanisms might be available to assist vehicle residents in these cases, but the following option was presented by the workgroup's legal services representative:

1. Allow vehicle residents to enter into payment plans with tow operators in order to redeem their vehicle residences.

### Additional Procedural Modifications and Protections for Vehicle Residents

The workgroup's examination of issues surrounding vehicle residency revealed additional procedural modifications that may be necessary to accommodate vehicle residents who experience the impoundment of their vehicular home.

#### Redeeming Personal Belongings from an Impounded Vehicle Residence

When a vehicle residence is impounded, vehicle residents often lose access to most, or all, of their personal belongings. These belongings may remain in a secure location, most commonly a tow operator's lot, for days or weeks as the process of redeeming the vehicle unfolds. In the case of Steven Long, his personal belonging included the tools he used to earn a living. In this regard, the impoundment of vehicle residences is often distinctly different from the impoundment of vehicles that do not serve as a primary residence. The workgroup recognized that this may pose serious challenges to vehicle residents, and as a result, examined mechanisms to facilitate access to, and the release of, personal belongings.

Chapter 46.55 RCW allows a vehicle's owner or agent to redeem personal belongings during business hours with the presentation of sufficient identification (typically a driver's license). There are many circumstances, however, under which a vehicle resident is not the legal or registered owner of record, which may prevent them from retrieving personal belongings. While the workgroup recognized the importance of quickly releasing vehicle residents' personal belongings, they also recognized that 1) tow operators could not make such discretionary decisions (based on RCW 46.55.090) and 2) allowing tow operators to make such decisions



could open them to liability should they release personal belongings to individuals falsely claiming ownership.

Thus, to facilitate access to, and release of, personal belongings when vehicle residents are not the legal or registered owner (or agent thereof), the workgroup found that courts were best suited to determine the release of personal belongings during impound hearings. In conjunction with the workgroup's earlier recommendation that impound hearings involving a vehicle residence be scheduled within five business days, the release of personal belongings could be achieved in a timelier fashion, and for individuals who may otherwise have no means to gain access to important belongings.

The workgroup also discussed possible sources of evidence on which judges could base their decisions to release personal belongings. Currently, the workgroup learned that complete and accurate inventories of personal belongings are not consistently documented by either law enforcement or tow operators. The workgroup also recognized that in many cases it may not be reasonable to require officers or tow operators to filter through and catalog all personal belongings associated with impounded vehicle residences. As an alternative, the workgroup found that photographs of the vehicles' interior may provide useful information for judges to establish ownership of belongings during impound hearings.

Thus, the workgroup recommended the following as options:

1. Include language in chapter 46.55 RCW that specifically identifies the impound hearing as the proper venue for determining ownership of personal belongings when a vehicle resident is not the registered owner of the impounded vehicle.
2. Require tow operators to take plain view photographs of vehicle residences' interior for the purpose of identifying personal belongings. See Appendix A for sample language that may be incorporated into chapter 46.55 RCW to identify the courts as an appropriate venue for releasing personal belongings.

### **Additional Technical Amendments and Policy Considerations**

Throughout the workgroup's examination of vehicle residency in Washington state, it became evident that additional technical amendments and policy considerations should be considered.

#### *Technical Amendments*

##### *Definition of Vehicle Residence*

Chapter 46.55 RCW should adopt a definition of a "vehicle residence." The group did not agree on a precise definition but noted that it should accommodate the Homestead Act and the recommendations in this report.

##### *Permitting Courts to Vary Fines*

RCW 46.55.120 (3)(c) currently states that, "The court may not adjust fees or charges that are in compliance with the posted or contracted rates." This language would need to change to

accommodate the *Long* case, which requires that fees or charges be adjusted to account for individuals' ability to pay.

### Policy Considerations

The workgroup held a widely-agreed-upon position that the state and its municipalities should strive to adopt practices that prevent the impoundment of vehicle residences whenever reasonable. This position is rooted in the belief that impounding vehicle residences may create negative outcomes for vehicle residents, the state and its municipalities, and towing operators alike. At minimum, vehicle residents lose access to their primary shelter and personal belongings; the state or its municipalities may incur costs for reimbursing tow operators when vehicle residents lack the ability to pay; and should tow operators be limited to charging no more than cost when vehicle residents lack the ability to pay, their bottom line, as private businesses, may suffer. The workgroup found that the following potential policy changes could reduce the need for impoundment.

### *Provisions for Additional Parking*

In many jurisdictions throughout Washington, there is a lack of overnight parking, as well as long-term parking, for vehicle residents. For example, Pruss and Cheng (2020) recently reported that Seattle had approximately twenty overnight spaces available for their population of approximately 2,000 vehicle residents in 2018. Vehicle residences are commonly parked in public spaces and may become subject to impoundment for a variety of reasons, including unpaid fines associated with parking violations, expired vehicle registration, and parking on public streets for longer than permitted (typically between 24 to 72 hours).

**Short-Term Parking.** One response is that some municipalities in Washington (like some in other states) have adopted "safe parking" programs that provide vehicle residents with a safe space to park overnight (Ivey & Gilleland, 2018). Safe parking areas provided by these programs typically consist of parking lots on private (e.g., churches) or public land where residents can park for the night without the concern of receiving a ticket or facing the need to move along. Moreover, these safe parking areas may be staffed by non-profit organizations and/or volunteers to facilitate the provision of services to vehicle residents who park for the night. These short-term parking options also remain affordable to cities and are far less costly than providing alternative housing options for vehicle residents.

Municipalities should also take note of and respond to the placement of "ecology blocks." This action occurs when a private party places large concrete blocks along public streets to block out or prevent the legal parking of vehicle residences. These blocks are sometimes placed anonymously, and their placement may be in violation of municipal code.

Long-Term Parking. While the workgroup recognized that the creation and/or expansion of “safe parking” programs may be helpful for communities and their vehicle residents, they also noted that there remains a need for long-term parking for vehicle residents. Long-term parking options could facilitate additional benefits to both vehicle residents and municipalities. These benefits include the following:

1. Vehicle residents, and potentially their families, will have more stable living arrangements and will not face the need to continually change parking spots to avoid parking fines.
2. Existence of long-term parking locations could facilitate the opportunity for social service outreach, case management, and housing navigation professionals to meet with their vehicle resident clients in a safe, stable, and consistent setting.
3. Vehicle residences that suffer mechanical failures (as was the case with Steven Long’s truck) will have a place to park while solutions are found to repair the vehicle.
4. Tow operators could be permitted to tow vehicle residences to long-term lots or vehicle resident triage lots in lieu of impoundment.
5. Reduced reliance on impoundment may save municipalities costs associated with impound hearings and the potential reimbursement of tow operators for their services.
6. Like short term parking, long-term parking that supports vehicle residents, many of whom are in transitional living circumstances, is more affordable than providing other housing alternatives to this population.

Consequently, the workgroup recommended that jurisdictions—the state, counties, and municipalities—create spaces that allow for long-term parking of vehicle residences and that tow operators be permitted to tow vehicle residences, when reasonable, to long-term parking locations in lieu of impoundment.

#### *Avoid “Poverty Tows” of Vehicle Residences*

The workgroup recognized that circumstances arise where the towing and impounding of vehicle residences is necessary. Perhaps, this is most clearly the case when a vehicle residence poses a public safety concern. On the other hand, there are also circumstances where impoundment is legally permissible, but less necessary. Advocates have expressed concern that towing disproportionately affects those living in poverty since they have less access to off-street parking and a reduced ability to pay fines and fees associated with parking tickets and vehicle registration (Allison-Godfrey et al., 2021; Public Law Center et al., 2019; Pruss & Cheng, 2020). Thus, towing individuals for unpaid parking tickets, expired registration, and/or parking in a single location for too long has become referred to as a “poverty tow.” Notably, a poverty tow is unlikely to resolve substantial safety concerns to the community, but when these tows involve a vehicle residence, there is considerable hardship placed on the vehicle resident(s) for reasons previously identified in this report. As a result, the workgroup recommends that municipalities adopt practices to avoid or eliminate the impoundment of vehicle residences for unpaid tickets when no public safety concern exists.

### *Fund Cities to Enhance Social Services and Expand Spaces for Vehicle Residences*

The workgroup's discussion revealed that cities are aware of challenges associated with a rise in homelessness across Washington state and need the state's assistance to address these concerns at the local level. In particular, the workgroup recommends that funding be provided for three specific purposes:

1. To provide municipalities with the funds necessary to reimburse tow operators when, pursuant to *City of Seattle v Long*, courts find individuals unable to pay fees and fines associated with impounds.
2. To provide municipalities with funds to support the creation or expansion of spaces for overnight parking and long-term parking. Specifically, for long-term parking, the state should create funds that are not strictly contingent upon the goal of rapid re-housing (characteristic of HUD funding), but rather upon the goal of providing a space for vehicle residents who may be transitionally homeless or otherwise cannot afford a private space to legally inhabit their vehicle as a form of affordable housing.
3. To provide for social services that could be paired with short- and long-term parking spaces to provide housing navigation assistance, social service case management, and help address the underlying issues of homelessness.

### *Pre-Impoundment Photographs*

The workgroup also discussed the possible utility of requiring law enforcement or tow operators to photograph vehicles prior to towing and impound. Photographs could serve as useful information during impound hearings when disputes arise as to whether a vehicle constitutes a vehicle residence, consistent with *City of Seattle v. Long's* application of the Homestead Act. At the same time, some workgroup members expressed concerns that photographs of vehicle residences may present as unwarranted surveillance. Other members acknowledged that requiring photographs would add some level of difficulty to the work of police or tow operators, and there was not agreement about whether this option should be adopted.

## **CONCLUSION**

Based upon the Washington Supreme Court's recent findings and holdings in *City of Seattle v. Long*, chapter 46.55 RCW, which regulates the towing and impounding of vehicles, several modifications should be considered by the legislature. Those suggested changes, as described in this report, are primarily the result of the Court's finding that vehicles lived in as primary residences constitute homesteads, as defined by chapter 6.13 RCW and therefore fall under the protections of the Homestead Act. In addition, changes are needed to chapter 46.55 RCW to accommodate the Court's finding that fines/fees associated with the impound of vehicles may be deemed excessive if individuals lack the ability to pay. Beyond this, chapter 46.55 RCW should also be modified to better accommodate the hardships caused by the impound of vehicles used as primary residences, since, at minimum, such impounds may deny residents their sole shelter and prevent access to their belongings. Finally, policies are needed to better address the lack of short- and long-term parking available to those using their vehicle as a

residence, which have the potential to benefit several stakeholder groups including the state, its counties and municipalities, taxpayers, tow operators, and vehicle residents.

## APPENDIX A.

Sample language (in bold) that could be added to RCW 46.55.120 allowing 1) courts to authorize the release of impounded vehicles after an impound hearing, 2) courts to authorize the separate release of personal belongings from impounded vehicles after an impound hearing and 3) a new/additional mechanism by which tow operators can release vehicles to individuals.

RCW 46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment.

(1)(a) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW [46.55.080](#), [46.55.085](#), [46.55.113](#), or [9A.88.140](#) may be redeemed only by the following persons or entities:

- (i) The legal owner;
  - (ii) The registered owner;
  - (iii) A person authorized in writing by the registered owner;
  - (iv) The vehicle's insurer or a vendor working on behalf of the vehicle's insurer;
  - (v) A third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family;
  - (vi) A person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department;
  - (vii) A person who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor; or
  - (viii) If (a)(i) through (vii) of this subsection do not apply, a person, who is known to the registered or legal owner of a motorcycle or moped, as each are defined in chapter [46.04](#) RCW, that was towed from the scene of an accident, may redeem the motorcycle or moped as a bailment in accordance with RCW [46.55.125](#) while the registered or legal owner is admitted as a patient in a hospital due to the accident.
- (ix) A person who is authorized by a court, after an impound hearing or other procedure, to redeem the vehicle.**

- 1) A court or administrative hearing officer, for the jurisdiction in which the vehicle was impounded, may order release of the vehicle to any person meeting the criteria in (1)(a)(i)-(viii) in this section after a hearing or legal proceeding; or**
- 2) If ownership of the vehicle or authorization from the legal or registered owner to use, reside in, or retrieve the vehicle is disputed, a court or hearing officer may review any additionally presented information and evidence at a court hearing. If a person is unable to present sufficient evidence that they meet the criteria in (1)(a)(i)-(viii), a court, with good cause, may set aside a hearing for up to 15 business days, unless extenuating circumstances require additional time, to allow the individual an opportunity to file appropriate ownership paperwork with the Department, or to obtain written authorization from the legal or registered owner to redeem the vehicle. If a claimant files a claim to quiet title to the vehicle under RCW 46.12.680 during this time, a court may grant an additional continuance until that legal proceeding has ended.**
- 3) A court may separately order release and retrieval of any personal property inside a vehicle, if a requesting person establishes ownership to that personal property, by a preponderance of the evidence.**

**(b)** In addition, if (a)(i) through (ix) of this subsection do not apply, a person may redeem a vehicle as defined under this section, on behalf of the registered or legal owner, subject to the following requirements:

**(i)** The authorized person must pay the costs of towing, storage, or other services rendered during the course of towing, removal, or storing of the vehicle.

**(ii)** The authorize person must provide a valid government-issued photo identification, such as a current driver's license or state-issued identification card, military identification, or passport.

**(iii)** The authorized person must sign a declaration on a form furnished by the department that provides:

1) The person's name, telephone number, and physical address;

2) The relationship between the person and the registered or legal owner;

3) The address of the physical location where the vehicle will be stored for the registered or legal owner at no additional cost to the owner;

4) A statement that the person agrees to protect the vehicle and return it to the registered or legal owner in the same form it was received when removed from the registered tow truck operator's premises; and

5) A statement that the person knowingly agrees to become the bailee for the vehicle.

**(iv)** The declaration form under (c) of this subsection must be signed under penalty of perjury.

**(c)** The registered tow truck operator may refuse an offer to redeem under this section for good cause, which includes, but is not limited to, competing applications for redemption from persons identified under [RCW 46.55.120\(1\)\(a\)](#) or the person applying to be the bailee has been convicted of a crime of dishonesty or theft. This section does not require a registered tow truck operator to investigate or otherwise determine the criminal history or the credibility of the bailee.

**(d)** Any registered tow truck operator acting in good faith in compliance with this section that releases a vehicle in accordance with the requirements of this section is immune from civil liability arising out of the bailment unless the tow truck operator's act or omission constitutes gross negligence or willful or wanton misconduct.

**(e)** In addition to any remedies provided by common law for bailments, a person who becomes the bailee of a vehicle under this section and fails to return the vehicle to the registered or legal owner may be charged with possession of a stolen vehicle under [RCW 9A.56.068](#).

**(f)** The department must create a declaration form to be completed by individuals that identifies the required information in subsection (1)(b)(ii) and (iii) of this section. The department must post the form on its website, and the form must be able to be downloaded from the department's website.

## APPENDIX B.

### Sample language providing additional protections to vehicle residences

#### NEW SECTION-RCW 46.55.145 Vehicles used as a residence

- (1) Impounded vehicles that are used as vehicle residences are subject to additional procedures and protections, as partially outlined in this section.
- (2) A state or its agents or a municipality or its agents shall develop procedures to ensure that vehicle residences are only impounded pursuant to the provisions of RCW 46.55 and impounded as a last resort after considering all available, reasonable alternatives to impoundment, including but not limited to:
  - a. contacting the individual(s) living in the vehicle to inform them of parking laws and alternate places to move their vehicle
  - b. towing or moving the vehicle to a safe lot or safe parking area after proper notification
  - c. moving the vehicle to an alternative legal location within the jurisdiction where the vehicle could be retrieved at no cost by the individual(s) living in the vehicle
- (3) If a state or its agents or a municipality or its agents receives any information or observes any indicia that a vehicle is a vehicle residence, the state or its agents or municipality or its agents must notify the tow operator upon requesting impound or 24 hours after impound that the vehicle may be being used as a residence and may subject to the additional protections. A registered tow truck operator responding to a request by an impounding authority to impound a vehicle under this section is not acting as an agent of the state for these purposes.
- (4) If at any point prior to public auction, the impounding authority receives any information pursuant to section (3) above, that the impounded vehicle is a vehicle residence or lived in, any public auction procedures under RCW 46.55.130 must be stopped. The operator must provide written notice of the right of redemption and opportunity for a hearing to any individual claiming to live in the vehicle, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. This notice must be provided again, even if it has already been previously mailed or provided under the procedures of 46.55.110.
- (5) If 60 days have passed since notice from a state or its agents or municipality or its agents under section (3) above or 60 days have passed since providing or re-providing this notice under section (4) above, whichever time period is greater, and no individual claiming to live in the vehicle or any other individual authorized to redeem the vehicle under RCW 46.55.120 has requested a hearing, redeemed the vehicle by payment, or communicated with the tow operator to arrange redemption of the vehicle, the vehicle may be considered abandoned. An operator may proceed forward with the public auction procedures under RCW 46.55.130 after expiration of this 60-day period, by providing a mailing of notice of custody and sale to the registered and legal owners, and by providing this to any individuals that previously came forward to say they lived in the vehicle. The vehicle may then proceed to auction fifteen days after expiration of that notice of custody and sale, pursuant to the general procedures of RCW 46.55.130, or fifteen days after a court has ordered the vehicle be released.
- (6) If an impounded vehicle is subject to the provisions of RCW 46.55.145, personal belongings shall be kept intact, and may not be considered abandoned or disposed of at the registered tow operator's discretion until the date of auction. No personal belongings request form shall be required under RCW 46.55.090.



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