

INTRADEPARTMENTAL CORRESPONDENCE

February 10, 2012

14.5

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: COMMUNITY CARETAKING DOCTRINE AND VEHICLE IMPOUND PROCEDURES – ESTABLISHED

RECOMMENDED ACTION

That the Board of Police Commissioners REVIEW the implementation of the Community Caretaking Doctrine and Vehicle Impound Procedures – Established.

DISCUSSION

The attached Special Order establishes Department Manual Section 4/222.05, Community Caretaking Doctrine and Vehicle Impound Procedures - Established.

The Order was initiated, in part as a result of concerns identified in the Inspector General's "Supplemental Review of Biased Policing Complaint Investigations" regarding the Department's impound practices. Additionally, the Department sought to clarify various impound protocols to ensure they were consistent citywide, conformed with the application of the Community Caretaking Doctrine, and reflected recent changes in the California Vehicle Code related to vehicle impounds at driving under the influence checkpoints.

Officers will continue to be guided by the Community Caretaking Doctrine when deciding whether to impound a vehicle driven by an unlicensed driver or a driver with a suspended or revoked license. When an unlicensed driver's vehicle will be impounded, officers will be directed to place a 30-day hold if the driver has prior convictions for being an unlicensed driver, is unable to show proof of insurance, has insufficient identification, or is at-fault in a major traffic collision.

Should you have any questions, please contact Captain Carol J. Aborn Khoury, Commanding Officer, Planning and Research Division, at (213) 486-0400.

Respectfully,



CHARLIE BECK
Chief of Police

Attachment

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO.

SUBJECT: COMMUNITY CARETAKING DOCTRINE AND VEHICLE IMPOUND PROCEDURES - ESTABLISHED

PURPOSE: The California State Legislature continues to recognize that driving a motor vehicle is a privilege and not a right, as delineated in Section 14607.4 of the California Vehicle Code (VC). This Order establishes the procedures for impounding vehicles from unlicensed drivers, and drivers with suspended or revoked licenses encountered in the field, at the scene of traffic collisions and at driving under the influence (DUI) checkpoints. In addition, this Order provides guidance regarding the enforcement of VC Sections 22651(p) "Unlicensed Driver," and 14602.6(a) "30-Day Holds," and guidance on how to apply the "Community Caretaking Doctrine." This Order establishes Section 4/222.05, *Community Caretaking Doctrine and Vehicle Impound Procedures*, to the Department Manual.

PROCEDURE: Various sections of the California Vehicle Code authorize the impoundment of a motor vehicle driven by an unlicensed driver or a driver with a suspended or revoked driver's license. However, state and federal court decisions have held that the statutory authority to impound, alone, does not determine the constitutional reasonableness of the seizure under the Fourth Amendment of the United States Constitution. In evaluating the reasonableness of warrantless vehicle impounds, courts have focused on whether the impoundment was in accordance with the Community Caretaking Doctrine. Consequently, this Order clarifies the application of the Community Caretaking Doctrine and the Department's impound procedures.

I. COMMUNITY CARETAKING DOCTRINE OVERVIEW. Officers shall be guided by the Community Caretaking Doctrine and the procedures set forth in this Order when deciding whether to impound a vehicle driven by an unlicensed driver, or a driver with a suspended or revoked license. The courts have ruled that this doctrine allows officers to impound a vehicle when doing so serves a community caretaking function. An impoundment based on the Community Caretaking Doctrine is likely warranted:

- * When the vehicle is impeding traffic or jeopardizing public safety and convenience, such as when a vehicle is disabled following a traffic collision;

- * When the vehicle is blocking a driveway or crosswalk or otherwise preventing the efficient movement of traffic (e.g., vehicle, pedestrian, bicycle);
- * When the location of the stopped vehicle may create a public safety hazard (e.g., vehicle, pedestrian, bicyclist);
- * When the location of the vehicle, if left at the location, may make it a target for vandalism or theft; or,
- * To prevent the immediate and continued unlawful operation of the vehicle (e.g. licensed driver not immediately available).

The totality of circumstances, including the factors listed above, should be considered when deciding whether impoundment is reasonable under the Community Caretaking Doctrine and the Fourth Amendment. The decision to impound any vehicle must be reasonable and in furtherance of public safety.

II. UNLICENSED DRIVER AND DRIVER WITH A SUSPENDED/REVOKED LICENSE IMPOUND AUTHORITIES.

A. Unlicensed Driver - No Priors. Section 22651(p) VC shall be used as the impound authority for all vehicles being impounded when it has been determined that the driver was involved in the following and the officer issues a Traffic Notice to Appear citation, Form 04.50.00:

- * Driving without a valid California Driver's License (unless the driver is a nonresident with a valid license or otherwise exempt under the Vehicle Code); or,
- * Driving with an expired, withheld, or out-of-class California Driver's License.

Officers shall release the vehicle in lieu of impound provided **all** of the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's License or is a nonresident with a valid license or otherwise exempt under the Vehicle Code;
- * The registered owner and licensed driver are immediately available;
- * The registered owner authorizes the licensed driver to drive the vehicle; and,
- * The vehicle's registration is valid.

Note: If the traffic stop is conducted in the registered owner's residential driveway or a legal parking space in the immediate vicinity of the owner's residence, impounding the vehicle **would not** be appropriate. However, this exception does not apply if the driver is not a registered owner of the vehicle and the registered owner is not present to lawfully assume control of the vehicle.

The name and driver's license number of the licensed driver that the vehicle is being released to shall be documented in the narrative portion of the Traffic Notice to Appear that is issued to the unlicensed driver. If it is determined that the registered owner knowingly allowed an unlicensed driver to operate the vehicle, he or she may be cited for Section 14604(a) VC, "Non-Owner Driver of Vehicle."

When the vehicle cannot be released to a licensed driver, the vehicle shall be impounded pursuant to Section 22651(p) VC to prevent the immediate and continued unlawful operation as warranted under the Community Caretaking Doctrine. The Official Police Garage (OPG) tow should be requested when it is determined that the vehicle cannot be released.

Note: If it is determined that the vehicle will be impounded, use impound authority Section 14602.6(a)(1) VC (30-Day Hold) if **all** of the following conditions are met:

- * The driver has never been issued a driver's license by any jurisdiction (foreign or domestic); **and**,
- * The driver is unable to show proof of insurance **or** at-fault in the traffic collision **or** lacks proof of identification.

The reason to impound the vehicle shall not be based on whether the vehicle is properly insured.

B. Unlicensed Driver - With Prior(s) .

Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority when it has been determined that the driver has never been issued a driver's license by any jurisdiction (foreign or domestic) **and** has a prior misdemeanor conviction for 12500(a) VC.

Note: Section 22651(p) VC shall always be used as the impound authority if it has been determined that the driver has an expired, withheld or out of class driver's license and has a prior misdemeanor conviction for 12500(a), 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 VC.

Officers shall document in the "Remarks" or "Narrative" section of the impound Vehicle Report, CHP 180 form, that the vehicle is eligible for vehicle forfeiture as delineated in Section 14607.6 VC, except if the driver's license expired within the preceding 30 days then no such notation shall be made.

C. Driver with Suspended/Revoked License - No Priors.

Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority for all vehicles being impounded when it has been determined that the driver was involved in any of the following:

- * Driving with a suspended or revoked license; or,
- * Driving with a restricted license pursuant to Sections 13352 or 23575 VC, and the vehicle is not equipped with a functioning, certified interlock device.

Officers shall release the vehicle in lieu of impound provided **all** of the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's License or is a nonresident with a valid license or is otherwise exempt under the Vehicle Code;
- * The registered owner and licensed driver are immediately available;
- * The registered owner authorizes the licensed driver to drive the vehicle; and,
- * The vehicle's registration is valid.

Note: If the traffic stop is conducted in the registered owner's residential driveway or a legal parking space in the immediate vicinity of the owner's residence, impounding the vehicle **would not** be appropriate. However, this exception does not apply if the driver is not a registered owner of the vehicle and the registered owner is not present to lawfully assume control of the vehicle.

Officers impounding a vehicle under Section 14602.6(a)(1) VC shall either effect a custodial arrest of the driver or issue a Traffic Notice to Appear citation in the field. Vehicles impounded under this Section shall be impounded for 30 days, unless earlier release is authorized by the Area Auto detectives in accordance with Section 14602.6 VC.

The name and driver's license number of the licensed driver that the vehicle is being released to shall be documented in the narrative portion of the Traffic Notice to Appear that is issued to the unlicensed driver. If it is determined that the registered owner knowingly allowed an unlicensed driver to operate the vehicle, he or she may be cited for Section 14604(a) VC, "Non-Owner Driver of Vehicle."

- D. Driver with Suspended/Revoked License - With Prior(s).** Section 14602.6(a)(1) VC (30-Day Hold) shall be used as the impound authority for all vehicles being impounded when it has been determined that the suspended/revoked/restricted violator has a prior misdemeanor conviction for Section 12500(a), 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5 VC.

Note: Officers shall document in the "Remarks" or "Narrative" section of the impound Vehicle Report, that the vehicle is eligible for vehicle forfeiture as delineated in Section 14607.6 VC.

III. MISCELLANEOUS IMPOUNDS.

- A. Impounding Vehicles Driven by Habitual Driving Under the Influence Offenders.** Section 14602.8(a)(1) VC authorizes an officer to impound a vehicle from a driver when it is determined that a person has been convicted of Section 23140 VC, Juvenile Driving Under the Influence of Alcohol; 23152 VC, Driving Under the Influence of Drugs or Alcohol; or 23153 VC, Causing Bodily Injury While Driving Under the Influence of Drugs or Alcohol, within the past 10 years **and** one or more of the following circumstances applies.

The officer shall immediately cause the removal and seizure of the vehicle that such a person was driving, under either of the following circumstances:

- * The person was driving a vehicle with a blood alcohol content of 0.10 percent or more; or,

- * The person driving the vehicle refused to submit to or complete a chemical test.

A vehicle impounded pursuant to the aforementioned section shall be impounded for one of the following time periods:

- * Five Days - If the person has been convicted once for violating Sections 23140, 23152 or 23153 VC, and the violation occurred within the preceding 10 years; or,
- * 15 Days - If the person has been convicted two or more times for violating Sections 23140, 23152 or 23153 VC or any combination thereof, and the violations occurred within the preceding 10 years.

The vehicle shall be released to the registered owner or his or her designee prior to the end of the impoundment period only under conditions set forth in Section 14602.8(d) VC.

B. Citing or Arresting Unlicensed Drivers at Traffic Collision Scenes and Related Vehicle Impounds. For an unlicensed driver or driver with a suspended/revoked license at traffic collision scenes, the appropriate impound authority or release-at-scene protocol shall be utilized in accordance with Section II.

A driver involved in a traffic collision may be cited or placed under custodial arrest when the officer determines that the involved vehicle was operated by an unlicensed driver or a driver whose driving privilege was suspended or revoked.

The officer's determination shall be based upon witnesses' statements, a driver's admission and/or physical evidence. The related impound Vehicle Report shall contain the following:

- * A full narrative listing all of the information/elements to establish the driver's offense; and,
- * Names, addresses, telephone numbers and statements of witnesses that can establish the driver operating the vehicle.

If the traffic collision results in injuries, officers shall complete the Traffic Collision Report, CHP 555 form. However, if the traffic collision does not result in injuries and one of the parties is unlicensed, a Traffic Collision Report **shall not** be completed. The officer shall ensure an exchange of information is completed between the involved parties. Officers shall issue a Traffic Notice to Appear citation to the unlicensed driver and document the name, address and telephone number of the witnessing party or parties on the back of the "Golden Rod" copy of the issuing officer's Traffic Notice to Appear citation.

Note: When one of the involved parties does not possess a valid identification, officers shall advise the other party of the option to effect a private person's arrest. When a private person's arrest is made, officers shall indicate a charge of Section 12500(a) VC or 14601(a) VC, or other appropriate VC section(s) for driving when the privilege is suspended or revoked.

If the violator challenges the citation or arrest during a subsequent court proceeding, the issuing officer shall be responsible for contacting the witnessing parties and securing their attendance in court.

C. Impounding Vehicles at Driving Under the Influence Checkpoints. The following procedures apply if the driver's only offense is a violation of Section 12500 VC.

Officers shall make a reasonable attempt to identify the registered owner of the vehicle driven by an unlicensed driver.

When the registered owner is present or able to respond to the scene prior to the conclusion of the DUI checkpoint operation, or the officer is able, without delay, to identify the registered owner and obtain his/her authorization to release the vehicle to a licensed driver at the scene, the vehicle shall be released to either the registered owner or the authorized licensed driver provided the following conditions are met:

- * The registered owner or his/her designee has a valid California Driver's License or is a nonresident with a valid license or is otherwise exempt under the Vehicle Code;
- * The registered owner authorizes the licensed driver to drive the vehicle; and,
- * The vehicle's registration is valid.

The name and driver's license number of the licensed driver the vehicle is being released to shall be documented in the narrative portion of the Traffic Notice to Appear citation issued to the violator.

When the vehicle cannot be released to the registered owner or his or her designee, officers shall impound the vehicle under the authority of Section 22651(p) VC.

When the violator has a suspended or revoked driver's license, officers shall impound the vehicle under authority of Section 14602.6(a)(1) VC (30-day hold) as outlined in Section II "Unlicensed and Suspended/Revoked Driver Impound Authorities" of this Order.

D. Impounding Vehicles When the Driver is Arrested.

Section 22651(h)(1) VC authorizes an officer to impound a vehicle from a driver who has been arrested and taken into physical custody.

However, as noted in Section I of this Order, officers must also determine if the Community Caretaking Doctrine supports impoundment of the vehicle. When a driver is arrested, the vehicle **should not** be impounded under the following circumstances:

- * If the vehicle is parked in the arrestee's residential driveway or a legal parking space in the immediate vicinity of the residence;
- * If the vehicle is parked in a legal parking space where it is not posing a traffic hazard and is not likely to be a target of vandalism or theft; or,
- * If a licensed passenger is present and not impaired or otherwise unable to lawfully operate the vehicle and is given permission by the registered owner.

Note: In situations other than those above, when community caretaking warrants impoundment, Section 22651(h)(1) VC shall be used as the impound authority. If the driver arrested has prior DUI convictions, officers shall be guided by Section 14602.8(a)(1) VC.

AMENDMENT: This Order adds Section 4/222.05 to the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Internal Audits and Inspections Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

CHARLIE BECK
Chief of Police

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