

APPENDIX D

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: 01/13/2012

NUMBER: 7.08 - TRAFFIC

SUBJECT: VEHICLE TOWING/IMPOUND AND RELEASE PROCEDURES

RELATED POLICY: N/A

ORIGINATING DIVISION: TRAFFIC

NEW PROCEDURE:

PROCEDURAL CHANGE: EXTENSIVE CHANGES TO ENTIRE PROCEDURE

SUPERSEDES: DP 7.08 – 03/11/2010

I. PURPOSE

This Department procedure establishes guidelines for vehicle towing, impounds, and releases.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The purpose of this procedure is to standardize vehicle impound procedures on public and private properties. It also identifies the procedures for impounds and releases of vehicles subject to the San Diego Tow Impound Cost Recovery Fee.

IV. PROCEDURES

A. Impound Reports

1. All police tows require a San Diego Regional Vehicle Report (ARJIS-11).

2. Vehicles removed from private property at the request of the property owner are not police tows, therefore, an ARJIS-11 report is not required.
3. If the vehicle being impounded was illegally parked, a citation may also be issued.
4. The impounding officer will complete the vehicle report.
 - a. The vehicle report will need to be detailed, complete, and accurate.
 - b. The officer will need to document all visible exterior and/or interior damage to the vehicle on either the vehicle diagrams or the "Notes" section of the ARJIS-11.
 - c. The tow operator may request that the officer review the listed damage before receiving the vehicle.
 - d. After the tow truck driver signs the form, the officer will give the driver the goldenrod copy.
 - e. If the officer is required to leave prior to arrival of the tow truck, the goldenrod copy of the vehicle report may be left under the windshield wiper of the impounded vehicle.
 - f. The impounding officer is responsible for contacting the tow company to ensure the vehicle was taken prior to submitting the impound report for approval and to answer any questions the tow operator may have regarding noted vehicle damage or inventoried items.
 - g. Vehicles impounded for abandonment, 72-hour violation, and abatement are subject to the same 30-minute response, with the exception of Beat 235 (Rancho San Pasqual) which has a 50-minute response time, per the tow contract.
 - h. The approximate value of the vehicle MUST be noted on the vehicle report under "Appraised Value." Failure to appraise the vehicle can make the City liable if the towing company scraps/disposes of a vehicle at a lower value than its actual value (22670 CVC). Use the following appraisal values:
 - (1) \$0 to \$300;
 - (2) \$301 to \$4,000; or,
 - (3) Over \$4,000

- i. If there are no license plates on the towed vehicle, leave that space blank on the vehicle report. Include any plate numbers or other identifying information in the narrative of the vehicle report.
- j. The Vehicle Identification Number (VIN) shall be recorded on the vehicle report. The VIN shall be checked to ensure it is the same as the VIN listed on the registration card. If the registration is not with the vehicle, the VIN should be obtained via CAD or MCT.
- k. A vehicle impound report shall be completed for every vehicle or trailer stored at the time of impound. Members may separate and leave standing a vehicle or trailer that is not subject to impound with the approval of the owner.
- l. Cargo on a trailer shall be listed in the appropriate box of the impound report.
- m. If the cargo on a trailer is a vehicle or boat, the officer will complete a second ARJIS-11 documenting the information of the vehicle or vessel as "Load".

B. Vehicle Inventories

1. Areas to be Inventoried
 - a. Personnel ordering a tow shall conduct an inventory of all areas of the vehicle where valuables are likely to be stored, including any containers within the vehicle.
 - b. Under normal circumstances, locked compartments, such as trunks, do not need to be searched unless the impounding officer is supplied with a key to the compartment or there is an operable trunk release.
 - c. Locked containers within the vehicle will be described along with the approximate size and weight of the container, if able to be determined.
2. Items of Value
 - a. All items of value must be listed on the vehicle report.
 - b. If items of value within the vehicle are too numerous to be listed on the vehicle report, the officer will attach an ARJIS-9 or ARJIS-4 detailing the property.

3. Civilian employees must call a sworn officer to the scene to impound any currency, weapons, drugs, or other contraband found in a vehicle.
4. An inventory will not be conducted on vehicles being held as evidence. In these cases, the responsible investigator will conduct the inventory and document it in their investigative follow-up report.

C. Notice of Stored Vehicle

1. When a vehicle is impounded by the Department, the Police Impound Desk shall mail or personally deliver the Notice of a Stored Vehicle from the vehicle report (ARJIS-11) to the registered and legal owners of record, within 48 hours, excluding weekends and holidays. (22852 CVC).
2. The Police Impound Desk must prepare a second Notice of Stored Vehicle when vehicles are moved from a station to a private tow yard. The notice informs the owner/agent of their right to a Post Storage Hearing to determine the validity of the vehicle tow and storage.

D. Contract Tow Companies

1. Only contract tow companies will perform police tows. Contract tow trucks will be identified by a decal indicating "Police Authorized Tow Contractor" and the current year. All police tows shall be dispatched through CAD or via MCT.
2. When ordering a tow, specify the condition of the vehicle only. The tow company will make the decision regarding the necessary equipment and type of tow truck. The only exception to this would be if a flatbed tow truck is needed to preserve evidence during transportation of the vehicle.
3. Tow companies will not charge the Police Department a tow interruption fee when a vehicle is not towed.
4. The companies may charge the City a tow interruption fee if the vehicle has been hooked-up, but has not been transported and the officer approves the release.
5. The fee is currently \$12.00 for a standard tow interruption fee or "drop fee" and incrementally increases based upon the size of the vehicle.
6. The officer will write "DROP FEE" across the top of the ARJIS-11 and document the reason for assuming the cost of the tow interruption/drop fee within the narrative. The officer will forward the **original** ARJIS-11 form to the Tow Administrator at MS 732. **The form should not be sent to Records Division.**

7. Instances of poor service or "call jumping" by tow companies will be documented, by the officer at the scene, on an interoffice memo and sent to the Tow Administrator, Traffic Division at MS 732, describing the specific incident, the name of the company and the driver(s) involved.

V. POLICE TOWS

- A. Police tows may be generated for a variety of reasons. Many of these tows fall under a cost recovery program. The tow companies are responsible for the collection of fees that offset the City's costs for impounding vehicles of negligent owners/operators.
- B. Officers do not need to place a "Treasurer Hold" on the vehicle report to indicate cost recovery. The tow company automatically charges the appropriate fees based on the code section written in the "Storage Authority" block of the vehicle report. It is imperative that the officer writes the correct section on the ARJIS-11. Only one storage authority will be used per impound
- C. Entry of a "Hold For" Unit When Impounding for Evidence into CAD/MCT
 1. The label "Hold For (name)" has been changed to "Hold For".
 2. When impounding a vehicle under any of the 22655 Tow Reason (Authority) codes, the system will now require entry of a "Hold For" unit value. This will help in determining and tracking responsibility of evidence impounds for post impound follow-up and tracking.
 3. Officers will still be able to enter detective names and other comments when impounding for other Reason codes.
 4. Vehicles impounded as evidence under the evidence sections will need to comply with the requirements outlined above to be entered into the MCT or through the radio dispatcher.
 5. Officers will be required to identify the investigative unit for which the vehicle is being impounded as evidence (i.e., Traffic Investigations, Northern Investigations, Auto Theft, etc.).
 6. The "Tow Request" screen on the MCT has a "drop-down" list of investigative units and a selection must be made to identify the investigative unit for tracking purposes.

D. When impounding vehicles for driver's license related offenses (i.e. 12500(a), 14601 sections without prior proof of service, etc.), officers are encouraged to use discretion and consider the total circumstances when determining whether to impound a vehicle (examples: an adult with young children and has a licensed driver reasonably available; inclement weather, remote location, or location where the driver's safety may be put at risk and a licensed driver is reasonably available).

E. The following is a partial list of storage and impound authorities that may require additional action by officers:

1. 30-Day Impound (CVC 14602.6)
 - a. A 30-day hold is authorized when:
 - (1) A person is driving with a suspended or revoked driving privilege;
 - (a) The authority for the suspension must be 13200 through 13559 CVC; and,
 - (b) The driver has previously been served with notice of a current suspension or has personal knowledge that his or her driving privilege is suspended (i.e., driver admits knowledge of suspension).
 - (2) A person is driving while his or her privilege is restricted pursuant to Section 13352 or 23575 of the Vehicle Code, and the vehicle is not equipped with a functioning, certified interlock device; or,
 - (3) A person is driving without ever having been issued a driver's license, and either of the following conditions exists:
 - (a) The driver has a previous driving violation; or,
 - (b) The vehicle is in the Stolen Vehicle System (SVS) as previously being towed for a license violation.
 - (4) When either (1), (2), or (3) above are satisfied, the officer may immediately arrest that person and impound the vehicle, or if the vehicle is involved in a collision, the officer may remove the vehicle without the necessity of arresting the person.

- b. Due to time constraints specified in the Vehicle Code, the Tow Administration Unit is required to conduct Post Storage Impound Hearings within 48 hours of a request by the vehicle owner. As such, it is imperative that impound reports, and any related citations, arrest reports, or ARJIS-9s, be sent to the Tow Administration Unit as soon as possible, upon completion.
- c. Officers must fax **copies** of the impound report and all related reports to the Tow Administration Unit prior to securing at the end of their shift. The Tow Administration Unit fax number is (858) 495-7989. In the event it is not possible to fax the impound reports, **copies** should be sent via inter-office mail to MS 732 prior to securing at the end of shift. The **original** reports should be sent directly to Records Division.
- d. This procedure applies to any vehicles towed under authority sections 23109.2(a) (1) CVC, 14602.6(a) (1) CVC, or 14607.6(a) CVC where a Post Storage Impound Hearing is afforded by law. Failure to send the required reports may result in an early release of the vehicle, or impound and storage fees being incurred by the City of San Diego.
- e. CVC 14602.6 does not apply in the following circumstances:
 - (1) Driver's license is expired, out-of-class, or issued out-of-state;
 - (2) Driving privilege is suspended for points/negligent operator;
 - (3) Driving privilege is suspended for lack of insurance or proof of insurance or for accidents; or,
 - (4) Driving privilege is suspended for other than California Vehicle Code violations (i.e., failed to pay child support).
- f. The narrative of the vehicle report shall contain the driver's name, DOB, citation number, driver's license number (if applicable), charges, reason for stop, driver statements, suspension date, authority code, and whether the driver had been served or admitted to the suspension.
- g. When a driver's DMV history indicates "verbal or personal service needed," officers should complete a DL-310 and deliver the pink copy to the driver. The serving officer shall mail the white copy to

the DMV and the yellow copy to the Tow Administration Unit at MS 732.

2. CVC 14602.8 authorizes extended vehicle impounds for DUI arrests when the person is found to have a BAC level of .10 percent or more; or, the person refuses a chemical test.
 - (1) CVC 14602.8 (a) (2) (A) – authorizes the vehicle to be impounded for five days if the person has been convicted once of violating CVC sections 23140, 23152, or 23153, within the preceding ten years.
 - (2) CVC 14602.8 (a) (2) (B) – authorizes the vehicle to be impounded for 15 days if the person has been convicted two or more times for violating CVC sections 23140, 23152, or 23153, or any combination thereof, within the preceding ten years.
3. Vehicle Forfeiture (CVC 14607.6)
 - a. A vehicle may be impounded and is subject to forfeiture if:
 - (1) The driver is cited or taken into custody for being unlicensed, expired over 30 days, suspended, or revoked;
 - (2) The driver has a prior misdemeanor conviction for 12500 (a), 14601, 14601.1, 14601.2, 14601.3, 14601.4 or 14601.5 CVC; and,
 - (3) The driver is the registered owner of the vehicle.
 - b. Officers must determine that the misdemeanor conviction is for a driver's license violation.
 - (1) This information can be found in the "Convictions" section of the driver's history, also known as a B-5 or L-1, in SUN or on the MCT.
 - (2) Officers may not use the information in the FTA section of the driver's history in lieu of a misdemeanor conviction.
 - c. Determining whether the driver is the Registered Owner (or should be treated as Registered Owner)
 - (1) Ownership of the vehicle is evidenced by a copy of the registered or legal owner information of the vehicle history.

- (2) Ownership may also be shown if the driver is listed on a release of liability.
- (3) If the driver is not listed in the vehicle history, but is in possession of a bill of sale listing him or her as a purchaser, officers may forfeit the vehicle and seize the bill of sale. The original should be sent to the Tow Administration Unit at MS 732.
- d. Officers shall fax a copy of the impound report, citation, or arrest report, and proof of ownership to the Tow Administration Unit at (858) 495-7989 within 24 hours of impound.
- e. If an "on the spot" notice of forfeiture is served on a driver, the original shall be sent to the Tow Administration Unit at MS 732.
- f. Vehicle forfeiture will be initiated and tracked by the Tow Administration Unit at Traffic Division. Records Division shall forward a copy of all 30-day impounds to the Tow Administration Unit for evaluation for forfeiture.

4. Stolen/Embezzled Vehicle, Found on a Highway [CVC 22651 (c)]
 - a. A stolen vehicle (one for which there is a case report) recovered in the field will be stored unless it is operable AND the owner can take possession within a reasonable time. The officer must notify the Impound Desk to remove the stolen vehicle's description from the computer when a field release is completed.
 - b. "HOLD FOR AUTO THEFT" does not apply to recovered stolen vehicles unless investigative follow-up is required.
 - c. Vehicles will not be towed only as a "POSSIBLE STOLEN." ("POSSIBLE STOLEN" means a car that looks like it has been stolen, but is not entered into the California Law Enforcement Telecommunication System (CLETS) as stolen.)
5. Unattended on Freeway for Four Hours [CVC 22651 (f)]

When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

6. Driver Arrested and Taken into Custody [CVC 22651 (h) (1)]
 - a. Whenever a person is arrested for any criminal offense and taken into custody, the vehicle may be legally parked or may be impounded per 22651 (h) (1) CVC.
 - b. Officers should keep in mind that not every vehicle should be impounded. This section should be used as a problem-solving tool. Officers must consider:
 - (1) The location of the vehicle, and
 - (2) Whether an impound is necessary to prevent the vehicle from being a hazard to other drivers or being a target for vandalism or theft.
 - c. For the purpose of 22651 (h) (1), "taken into custody" means the physical taking of a person, charged with a crime, and the transporting of that person to a police facility or the appropriate booking facility, or to their home in the case of a juvenile arrest.
 - d. When preparing the impound report, officers should explain the reason for the impound, including why the vehicle could not be legally and safely parked at the scene or released to a licensed driver at the scene.
7. Officer serves notice of order of suspension or revocation in connection with either of the following [CVC 22651(h) (2)]:
 - a. Per CVC 13388, person under 21 years of age legally detained who is driving and whom the officer has reasonable cause to believe has a BAC of .01% or more, and who:
 - (1) Has a BAC of .01% or more; or,
 - (2) Refuses to take or fails to complete a PAS test.
 - b. Per CVC 13389, person legally detained who is driving and is currently on probation for DUI whom the officer has reasonable cause to believe is driving with BAC of .01% or more, and who:
 - (1) Has a BAC of .01% or more; or,
 - (2) Refuses to take or fails to complete a PAS test.

8. Vehicle Other Than Rental with Five or More Unpaid Parking Citations [CVC 22651 (i)]
 - a. A vehicle on a highway or any public lands may be impounded if the following criteria are met:
 - (1) The vehicle has five or more outstanding parking citations issued; and,
 - (2) At least 30 calendar days have passed since the issuance of the fifth qualifying citation.
 - b. A vehicle in a rented status is exempt
 - c. Prior to towing, officers must verify City of San Diego citations through the Auto Process program, via Communications Division. They must verify that the current registered owner of the vehicle was also the registered owner at the time of the qualifying citations.
 - d. The narrative of the vehicle report MUST include:
 - (1) Where the vehicle was found (on highway or public lands);
 - (2) A statement that the vehicle has at least five unpaid parking citations;
 - (3) The issuance date of the fifth citation which qualifies the impound to justify the tow (it is no longer required to list the individual dates of all unpaid citations or the bail amounts); and,
 - (4) How, when, and with whom the verifications were made to determine the number of unpaid qualifying citations and the issuance date of the fifth citation.
9. Parking Over 72 Hours [CVC 22651 (k)]
 - a. This section authorizes Department members to remove a vehicle from a highway when the vehicle has been parked or left standing upon a street or highway in excess of 72 consecutive hours in violation of a local ordinance authorizing removal
 - (1) SDMC 81.09(a) (1) authorizes a vehicle to be removed when it is parked in the same location for more than 72 consecutive hours.

- (2) SDMC 86.09.06 makes it unlawful for a person to park or leave standing a vehicle on any street or highway in excess of 72 consecutive hours.
- (3) SDMC 86.23(g) makes it unlawful for a person to store a vehicle on a street; a vehicle is considered to be stored when it has been left standing on a street without having been moved more than one-tenth of a mile within a consecutive 72-hour period.

b. The Traffic Division's Abandoned Vehicle Abatement (AVA) Unit has primary responsibility for processing vehicles parked in violation of the 72-hour Ordinance. The person taking the complaint of a long-term parked vehicle on the highway will notify Communications Division via MCT message (TO CT02), voice radio, or telephone. The dispatcher will format an "ADVISED" incident using the type code "72HR."

- (1) The following information should be documented on the incident:
 - (a) Location of the vehicle;
 - (b) Complainant's name, address, and phone number (if known). (Field personnel will use their unit number);
 - (c) Vehicle information including color, vehicle type, license number, and state of registration;
 - (d) Vehicle registration information will be added to the incident from the CLETS system by Communications Division when plate/state information is provided;
 - (e) Premise history information obtained from the CAD system; and,
 - (f) The complainant shall be advised that the information will be forwarded to the Abandoned Vehicle Abatement (AVA) Unit for follow-up.
- (2) Telephone reports of long-term parked vehicles received by the Communications Division will be processed through CLETS for "Possible Stolen."

- (a) A Communications dispatcher will immediately dispatch a unit to impound or release the vehicle to its owner if the vehicle is stolen.
- (b) All 72-hour violations reported to Communications Division will be forwarded to the Abandoned Vehicle Abatement (AVA) Unit via CAD.
- c. The following procedures may be utilized and reported to the dispatcher or placed in the comments sections when an "ADVISED" incident is formatted:
 - (1) A chalk mark will be placed on the wall of the tire (preferably the left rear) in such a fashion that the mark will continue onto the pavement from the wheel;
 - (2) Write the date and time the vehicle was marked onto the pavement next to the extended line;
 - (3) Record the location of the mark or any other method used, such as rocks on the top of the tire;
 - (4) Record the odometer reading (to the tenth of a mile);
 - (5) Attach a Vehicle Violation Warning Notice form (PD-87) to the vehicle in a conspicuous place, preferably under the windshield wiper;
 - (6) If the officer intends to finalize the "72HR" enforcement by marking and following up with a tow, the officer must inform Communications Division, who will note this in the comments section. This will avoid duplication; and,
 - (7) The incident generated will automatically provide the date/time the complaint was made, the service area, and the dispatcher taking the information.
- d. 72-Hour Impounds
 - (1) The officer impounding the vehicle should make a reasonable attempt to locate the owner of the vehicle before the tow is called. If the owner is located, the officer will advise that the vehicle will be impounded if it is not moved.
 - (2) The officer impounding the vehicle will include in the impound report all the data from the incident: date and

time marked, by whom, how marked, odometer reading at the time it was marked, the time it was impounded, and, other pertinent information should also be included. (i.e. unusual facts about car.)

(3) If the vehicle has been moved ANY distance from the marks, it cannot be impounded. It may, however, be cited for section 86.23(g) SDMC, if moved less than 1/10 mile.

10. Temporary Tow-away Signs for Street Cleaning, Repairs, Construction, or for Installation of Underground Utilities [CVC 22651(l)]

- a. Violations of Temporary "No Parking" or "Tow Away" signs are enforced when a complaint is received.
 - (1) The officer must determine that the signs had been posted 24 hours prior to any enforcement action.
 - (2) The complainant will provide the officer with the posting time.
- b. If a vehicle is impounded for being in a temporary tow-away zone, the following information shall be included in the vehicle impound report:
 - (1) Date and time the signs were posted;
 - (2) Location of the signs in relation to the impounded vehicle;
 - (3) Who posted the signs (a company name is sufficient); and,
 - (4) Who requested that the vehicle be impounded and his/her title (i.e., John Q. Driver, Foreman of Fix-it Construction).

11. Temporary Tow-away Signs For Special/Civic Events [CVC 22651 (m)]

- a. This may be enforced wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

- b. If a vehicle is impounded for being in a temporary tow-away zone, the following information shall be included in the vehicle impound report:
 - (1) Date and time the signs were posted;
 - (2) Location of the signs in relation to the impounded vehicle; and,
 - (3) Who posted the signs (a company name is sufficient); and,
 - (4) Who requested that the vehicle be impounded and his/her title (i.e., John Q. Driver, Special Events Coordinator).
12. Vehicle on Highway, Public Lands, or Off-street Parking Facility Open for Public Use, Registration Violations (see descriptions) [CVC 22651 (o) (1) (A) through (C)]
 - a. Occupied vehicles can be impounded by police officers only. Officers may also issue a "Notice to Appear" to the vehicle owner or may issue an "Owner's Responsibility" citation per 40001 CVC to the driver of a borrowed vehicle.
 - b. When DMV records indicate a vehicle may be towed for a registration violation, but the vehicle displays a current registration tab, temporary operating permit, or dealer report of sale, the vehicle will not be impounded, unless it can be shown that the displayed information is false.
 - c. Vehicles with expired registration that are parked on private property, and otherwise qualifying for impoundment, **shall not** be impounded. Citizens requesting an officer to remove a vehicle from private property for expired registration shall be directed to contact the property owner or management office to arrange for a private tow off of the property.
 - d. Vehicles may be impounded pursuant to the following authorities for the respective registration violations:
 - (1) 22651(o) (1) (A) for vehicles with registration expired over six months.
 - (2) 22651(o) (1) (B) for vehicles displaying a registration or temporary belonging to another vehicle.

(3) 22651(o) (1) (C) for vehicles displaying a registration or temporary that has been forged or altered.

13. Driver Cited for Never Having a License or an Out-of-Class License, or Whose License is Expired More Than 30 Days, or Driving When Their Privilege is Suspended or Revoked for any Reason [CVC 22651 (p)]

- When a driver's license is suspended and the driver history indicates "verbal or personal service needed," a DL-310 form must be completed and forwarded to DMV. In these instances, a citation should be issued charging 12500 (a) CVC and the officer may impound the vehicle.
- When a driver's license has inadvertently expired and the license history **does not** indicate suspended or withheld, officers may cite the violator for VC 12500(a), but should allow a 30-day grace period before impounding the vehicle.
- The narrative of the impound report must include the driver's name, date of birth, driver's license number if applicable, citation number, charge, and PC for the stop. A driver statement may also be included to facilitate post storage hearings, especially if the driver admits knowledge of suspended or revoked driving privilege.

14. Illegally Parked in Handicapped Space (CVC 22652)

- Vehicles parked in violation, on a City street or in a public lot, may be impounded.
- Vehicles parked in violation on private property open to the public are the responsibility of the property owner or agent.
- Proper signs and markings per 22511.7 and 22511.8 CVC must be posted.

15. Stolen/Embezzled Vehicle, Found on Private Property [CVC 22653 (a)]

Use same procedure as with stolen vehicles found on highway. See 22651(c) CVC, above.

16. Hit and Run Vehicle (Traffic Investigations Hold) (CVC 22655)

- This section should generally be avoided due to the delay in processing vehicle collision and hit & run reports within the Department. Instead, officers should impound the vehicle per

CVC 22655.5(a) to prevent premature releasing of evidence after 48 hours (see subsection "c").

- b. This section allows the removal for inspection as long as the vehicle is on a highway or on private property open to the general public where the public is explicitly or implicitly invited.
- c. The vehicle may be held for 48 hours (weekends and holidays not included), and then must be released upon demand of the owner.
- d. When a field arrest is made, the vehicle should normally be left parked legally at the scene.

17. Vehicle Involved in a Pursuit and Abandoned (Traffic Investigations Hold, 48-Hour Hold) [CVC 22655.3]

- a. This impound is intended to assist the officer in investigating, identifying, and apprehending the driver.
- b. The vehicle may be impounded only if the driver has not been arrested and when the vehicle has been abandoned and left unattended on property other than that of the registered owner.
- c. When impounding under this section, officers shall prepare a vehicle report and a detailed ARJIS-9. The ARJIS-9 shall include:
 - (1) Details of the pursuit;
 - (2) Suspect description; and,
 - (3) Whether the officer feels he/she can identify the suspect in a photo line-up.
- d. Forward one copy of the vehicle report and the original and two copies of the ARJIS-9 to the Traffic Investigations Sergeant at MS 732.

18. Vehicles Involved In or the Object of a Crime; Removal from Public or Private Property (CVC 22655.5) (Evidence Hold for the appropriate investigative unit.)

- a. This section allows officers to impound and store vehicles in order to preserve and retrieve evidence.

- (1) 22655.5(a) - when the officer has probable cause to believe that the vehicle was used as the means of committing a crime; or,
- (2) 22655.5(b) - when the officer has probable cause to believe the vehicle is itself evidence which tends to show that a crime was committed or that the vehicle contains evidence, which cannot be readily be removed, which tends to show that a crime was committed.

b. The impounding officer is responsible for notifying the investigative unit when a vehicle is impounded for evidence. This includes forwarding a copy of the impound report to the investigator.

c. Vehicles impounded at a tow facility will become the responsibility of the case investigator. The investigator will be responsible for processing and releasing the vehicle.

- (1) The vehicle must be released within three working days, unless extenuating circumstances exist. The investigator's lieutenant must approve exceptions to the three-day rule. The tow companies have been instructed to require the name and identification number of the investigator and lieutenant who authorized a hold over three days.
- (2) Vehicles impounded for evidence where the crime is homicide or robbery will be towed to 9265 Aero Drive (Traffic Division) and stored inside the building in the southeast corner of the parking lot.
 - (a) Vehicles shall not be impounded at the Traffic Division facility or impound lots without prior approval of the Watch Commander's Office. The Watch Commander's Office will document all impounds to the Aero Drive facility.
 - (b) The impounding officer must notify the Watch Commander's Office prior to entering the storage facility so the alarm can be disabled.
 - (c) The impounding officer will attach a "hold" form (PD-831) in clear view on the vehicle listing the investigative unit or detective for whom the vehicle was impounded, the name and ID number of the impounding officer, and the reason for the impound.

- (d) The officer must fill out the log in the impound garage listing the location from which the vehicle was impounded, investigative unit, date of impound, case location, and/or case number, if known. The officer will also fill out the "Sign In/Out Log" regarding entrance into an evidence facility.
- (e) Upon securing the facility, the Watch Commander's Office must be notified so the alarm can be reset.
- (f) The Tow Administrator at Traffic Division is responsible for the vehicle impounds facility and tracking of impounded vehicles.
- (g) The case investigator will process the impounded vehicle and release it within three working days unless extenuating circumstances exist. A Lieutenant from the impounding unit must approve exceptions to the three-day rule.

19. Abandoned Vehicle on a Highway, Public Lands, or Private Property [CVC 22669 (d)]

- a. " An abandoned vehicle is any vehicle or part that is parked, stored or left on public or private property in such an inoperable or neglected condition that the owner's intention to relinquish all rights or interest in it may be reasonably concluded. Any vehicle or part that is wrecked, dismantled, or inoperative and that is parked, stored, or left on public or private property or, any vehicle left, parked, resting, or otherwise immobilized on any highway or public right-of-way which lacks an engine, transmission, windshield, or any other part or equipment necessary to operate safely on the highway.
- b. Any vehicle that is parked, resting or otherwise immobilized on any highway or public right-of-way which lacks an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operate safely on the highway, is declared a hazard to public health, safety and welfare and may be removed immediately.
- c. When a vehicle is a nuisance, inoperable, wrecked or dismantled on private property, open to public view, and is not obviously abandoned, or the property owner will not give consent to tow the

vehicle, the vehicle may be abated in accordance with 22660 CVC/81.10 SDMC.

- d. Public nuisance vehicles on private property are to be referred to the Abandoned Vehicle Abatement Unit at (858) 495-7856.
20. Driver Arrested for Engaging in a Speed Contest, Exhibition of Speed, Reckless Driving or Reckless Driving in an Off-street Parking Facility [CVC 23109.2(a)]

When a driver is cited or taken into custody for 23103 (a) or (b), or 23109 (a) or (c) CVC, officers may impound the driver's vehicle with a "hold" for 30 days.

VI. RELEASE OF IMPOUNDED VEHICLES

- A. Vehicles impounded under CVC Section(s) 14602.6, 14607.6, 22651 (i), (o), (p), or 23109.2 will be released only in compliance with the following:
 1. Section 14602.6(d) – the vehicle may be released prior to the 30th day upon completion of a post storage hearing with the approval of the Traffic Division employee designated as the hearing officer. The tow companies will accept no other releases.
 2. Section 14607.6(d) – vehicles subject to forfeiture may be released under certain circumstances upon completion of a post storage hearing with the approval of the Traffic Division employee designated as the hearing officer. The tow companies will accept no other releases.
 3. Section 22651(i) – the vehicle may be impounded until the owner furnishes all of the following items:
 - a. Evidence of identity and a California address at which he or she can be located;
 - b. Evidence that all parking violations issued against the vehicle and all other vehicles registered to the RO of the impounded vehicle, and all traffic violations of the RO have been cleared; and,
 - c. Evidence of current registration.
 4. Section 22651(o) (1) (A), (B), or (C)-the vehicle may be impounded until the owner provides the following:
 - a. Evidence of current registration or a temporary operating permit.

- b. A licensed driver.
- 5. Section 22651(p) - the vehicle may be impounded until a licensed driver responds, at the request of the legal owner or registered owner of the vehicle.
- 6. Section 23109.2 – a 30-day hold for engaging in a speed contest or reckless driving may be reduced during a post storage hearing. Traffic Division will be responsible for providing a hearing for cases initiated by patrol officers. The vehicle shall be released if the vehicle was stolen, or if the RO was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using the vehicle to engage in the alleged illegal activity that caused the vehicle to be impounded. The owner is not liable for any towing and storage charges related to the vehicle impound if acquittal or dismissal of the underlying criminal case occurs.

B. The Department may pay towing and storage fees if a victim's vehicle is impounded with "HOLD FOR EVIDENCE." If the assigned detective determines the Department should assume any of the fees, the detective shall contact the Tow Administrator at (858) 573-5067 or the Tow Administration Unit at (858) 495-7832/7826 to ensure the proper fees are applied. The owner pays any fees occurring after the vehicle's release from an evidentiary hold (i.e., storage occurring due to the owner failing to pick up the vehicle within the time specified by the Tow Administrator). All other towing or storage fees associated with legally towed vehicles are the responsibility of the owner. Owners who contest the charges will be referred to the Tow Administration Unit at (858) 495-7830 in order to conduct a Post-Storage Hearing.

C. A tow company will not release a vehicle with expired registration without the approval of the impounding agency.

D. If a vehicle has been impounded for Investigations and also has unpaid parking citations, owners should be referred to the Treasurer's Vehicle Release Section for payment of the citations and clearance of the registration.

E. Releasing a "Police Hold" for sections CVC 22655, 22655.3, 22655.5

- 1. Release to Owner or a Representative Designated by the Owner
 - a. The Vehicle Release Form (PD-368) should be completed only if all holds are being released. The owner, or owner's representative, will be provided the original unless a referral is made to the City Treasurer for additional clearances.

- b. The tow company will release the vehicle when the owner/representative presents the release form and personal identification and pays all appropriate tow fees.
2. Release to the tow company when the owner/representative fails to retrieve the vehicle
 - a. The tow yard will be informed that the hold is being released after the vehicle owner has been notified.
 - b. The Impound Desk (531-2844) will be notified by the assigned investigator of the transfer if the vehicle is being transferred from a police storage facility to a tow yard.

VII. PRIVATE TOWS

Private tows are those that are not initiated or facilitated by the City. Private tows are those that occur when tow companies are hired by private property owners to remove vehicles from their parking lots (shopping centers, apartment complexes, etc.). On occasion, officers may be summoned to assist with disputes involving private property tows and predatory tows. "Predatory tows" involve tow operators patrolling private property to enforce parking violations and impound vehicles without specific individual complaints. The following guidelines and Vehicle Code sections should be used by officers to determine the best course of action to be taken while investigating towing violations. The following Vehicle Code sections are misdemeanor crimes and subject the violator to arrest.

- A. Immediate and Unconditional Release of Vehicle (22658(g) (1) (B) CVC)
 1. Upon the request of the owner of the vehicle, or the owner's agent, the towing company or its driver shall immediately and unconditionally release a vehicle that is not yet removed from private property and in transit.
 2. To prove a violation:
 - a. The owner or owner's agent requested the release of the vehicle;
 - b. The vehicle must still be on private property and not yet in transit; and,
 - c. The tow operator failed to immediately and unconditionally release the vehicle.

3. The arresting officer shall provide the following information in the arrest report:
 - a. Evidence of ownership or agency (i.e., possession of the vehicle keys)
 - b. How and when the owner or agent discovered the car was being towed;
 - c. The period of time that passed since discovery;
 - d. What was said to the tow operator; and,
 - e. Whether the tow operator placed any conditions on the car's release (i.e., insist that the owner or agent pay a fee for the vehicle's release).

B. Charging Excessive Rate and Disclosure of Rates (22658(j), (1) and (2) CVC)

1. It is unlawful for a tow operator to knowingly charge a vehicle owner an excessive rate for a towing, service, or storage fee, or fail to make available the tow rate within 24 hours of a request by law enforcement, the Attorney General, a District Attorney, or a City Attorney.
2. The following proof is required for prosecution:
 - a. Violation of 22658(j) (1) - the rates charged at the time of the incident and law enforcement rates for San Diego Police Department or California Highway Patrol tows that are within the City of San Diego; and,
 - b. Violation of 22658(j) (2) - the facts regarding the failure to produce the rates within a 24-hour period.

C. Vehicle Code section 22658(h) allows a tow operator to charge not more than one-half of the regular towing charge if the vehicle owner, or agent, returns to the vehicle after the vehicle is coupled to the tow truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by means of a conventional trailer, and before it is removed from the private property. However, a tow operator cannot hold the vehicle hostage for this fee. The tow operator must release the vehicle on demand and without condition. Regular towing charges may only be imposed after the vehicle has been removed from the property and is in transit.

D. Failure to Accept Credit Cards or Post Notice (22658(k) CVC)

1. Towing company or vehicle storage operators must accept valid major credit cards as payment and post a notice that all valid credit cards are acceptable as a means of payment.
2. To prove a violation of 22658(k) (1) - if a tow company or vehicle storage operator refuses to accept a credit card from the vehicle owner or their agent, the arresting officer must provide the following information:
 - a. A statement from the vehicle's owner or agent;
 - b. Proof of payment by some means other than credit card; and,
 - c. Proof that the owner or agent had a valid credit card to offer as payment (Credit cards issued by a retail seller are not acceptable; the tow operator must only accept major credit cards.)
3. To prove a violation of 22658(k) (2) - if a tow company or vehicle storage operator fails to post a notice that all valid credit cards and cash are acceptable means of payment, the arresting officer must provide proof that no notice was posted. This may be in the form of photographs or descriptions of that portion of the storage facility where business is conducted with the public.

E. Written Authorization from Property Owner or Agent (22658(l) (1) (A) CVC)

1. A tow operator must get written authorization from the property owner, lessee, or an employee or agent, who is present at the time of removal and verifies the violation, before commencing removal.
2. There is an exemption for a residential rental property of 15 or fewer units with no onsite-management. In that case, a tenant may authorize a tow from the tenant's assigned parking space.
3. To prove a violation of (22658(l) (1) (A) - the arresting officer must obtain the following:
 - a. Information or statements showing that the tow operator cannot produce written authorization signed by an appropriate party present at the tow; and,
 - b. A description of the private property from which the vehicle was towed, including the address and property owner, if available.

- c. If the tow operator produces a signed authorization form, the officer should interview the property owner or the party who signed the form to find out when the form was signed and who was on site at the time of the tow.
4. Per 22658(l) (1) (C) (i) CVC, when a vehicle owner redeems a vehicle, and prior to payment of towing or storage fees, the towing company is required to provide a photocopy of the written authorization to the vehicle owner or agent. The written authorization must include:
 - a. The make, model, VIN number, and license plate of the vehicle;
 - b. The name, signature, and other identifying information of the authorizing party;
 - c. The grounds for removal of the vehicle;
 - d. The time that the vehicle was first observed parked at the private property; and,
 - e. The time that authorization to tow was given.
5. The towing company is required to redact the name, signature, and other identifying information of the person authorizing a tow from residential property. For this reason, in order to identify who authorized the tow, it is important to get a copy of the original tow authorization from the tow operator.
6. The tow company must also give the vehicle owner or agent a separate notice that provides the telephone number of local law enforcement or prosecuting agency that states: "If you believe that you have been wrongfully towed, please contact the local law enforcement or prosecuting agency at: San Diego Police Department (619) 531-2000, San Diego City Attorney (619) 533-5500." This notice must be in English and Spanish.

F. General Authorization to Remove or Commence Removal of a Vehicle

1. A property owner or manager may not delegate general authorization to remove or commence removal of a vehicle from private property to the discretion of a towing company or its affiliates, except:
 - a. When the vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane; or,
 - b. When the vehicle is parked in a manner which interferes with an entrance to, or exit from, the private property.

2. In these cases, the tow company must take a picture of the vehicle prior to hooking it up that clearly shows the parking violation. Additionally, the towing company shall keep the photograph and present it to the vehicle's owner or agent, prior to accepting payment. The tow company shall also provide a photocopy of the vehicle, without charge, to the owner or their agent at the time that person claims the vehicle.
- G. Notice of Tow to San Diego Police Department (22658(m) CVC)
 1. A tow company must notify local law enforcement within 60 minutes of removing a vehicle from private property, or within 15 minutes after arriving at a vehicle storage facility, whichever time is less.
 2. If a violation has occurred, the arresting officer must obtain:
 - a. A copy of the impound report;
 - b. The written authorization form; and,
 - c. A copy of the tow report log from the San Diego Police Department Teletype Unit.
 3. The tow company may claim they delayed notification because it was impracticable, however, it must be proven by the tow company. If the tow company claims it was impracticable, the officer shall get a complete statement as to why this occurred.

VIII. PREDATORY TOW ENFORCEMENT

- A. Violations of the private tow provisions in Vehicle Code section 22658 are misdemeanors. Officers who take enforcement action for these violations will apply the same standards as other misdemeanor arrests. Violators may be issued a misdemeanor citation or taken into custody. If the violation did not occur in the presence of the officer, a citizen's arrest may be necessary.
- B. All investigations, arrest reports, citations, and notify warrants shall be handled by investigators at the area command wherein the violation occurred. All complaints regarding predatory tows shall also be handled by the area command where the violation occurred.

IN THE SUPREME COURT OF THE UNITED STATES

LAMONTE DIONDRE GASTON,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

Certificate of Service

I, Chelsea A. Estes, appointed to represent the petitioner under the Criminal Justice Act, certify that on April 2, 2019, one copy of the Petition for a Writ of Certiorari, the Appendix, and a Motion to Proceed *In Forma Pauperis* in the above-captioned case were served by first-class mail, postage prepaid, to respondent's counsel. I further certify that all parties required to be served have been served. Service was addressed as follows:

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