



Roll Call Training Bulletin

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Katherine Lester, Chief of Police
Volume 83

Community Caretaking Regarding Vehicle Tows-Update

9-25-2024

Community Caretaking overview:

Previously, various vehicle code sections authorized the towing or impounding of vehicles for such things as being an unlicensed driver (Vehicle Code § 12500a) or driving on a suspended license (Vehicle Code § 14601). However, in 2019 Vehicle Code § 22650 was passed into law. This section states the following:

- It is unlawful for a peace officer or an unauthorized person to remove an unattended vehicle from a highway to a garage or to any other place, except as provided in this code.
- Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, **is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.**

The fact that an inventory search is authorized by statute is not determinative of the search's constitutionality. (*People. v. Torres* (2010) 188 Cal.App.4th 775, 787).

To be lawful, the impound must both be authorized by statute and serve a valid community caretaking function. (*People. v. Lee* (2019) 40 Cal.App.5th 853, 869).

An inventory search must strictly follow a department's policy and an officer's subjective intent for searching a vehicle is relevant. (*United States v. Anderson* (2024) 9th Cir.).

The following are examples of situations where consideration should be given to leaving a vehicle at the scene in lieu of storing, provided the vehicle can be lawfully parked and left in a reasonably secure and safe condition:

- The vehicle does not pose a hazard to others.
- Leaving the vehicle at that location would not pose a threat of damage, vandalism, or theft.
- Whenever the licensed owner of the vehicle is present, willing, and able to take control of any vehicle not used in criminal activity, or the owner authorizes another licensed person who is present to take control of the vehicle.
- The vehicle is parked on private property and the property owner or agent has been consulted about whether the vehicle can be left on the property.

The following are other examples of situations where the courts have ruled the tow or impound was lawful:

- The car was blocking a road, driveway, or crosswalk. (*People v. Lee* (2019) 40 Cal.App.5th 853, 868.)
- There are articulable facts that leaving the vehicle at that location would pose a threat of damage, vandalism, or theft. (*People. v. Torres* (2010) 188 Cal.App.4th 775, 788.)



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Pretext impound to conduct tow inventories:

The courts also consider the following factors in deciding if a tow inventory is lawful:

1. The failure of the officers who decided to impound the car to strictly follow departmental policy and thoroughly complete the impound form.
2. The court will also carefully examine the officer's conduct and language by reviewing any video evidence and the officer's subsequent testimony.
3. Whether an area of the vehicle inventoried could contain valuables or whether it was searched to find illegal items.

The decision to impound a vehicle is unlawful when done as a pretext to search for contraband. The impounding of a vehicle done merely as a *pretext* for conducting an investigatory search is not lawful, and the resulting evidence will be suppressed. (*People v. Aguilar* (1991) 228 Cal.App.3rd 1049.) A tow inventory must not be a ruse for a general rummaging in order to discover incriminating evidence. (*United States v. Torres* (9th Cir. 2016) 828 F.3rd 1113, 1118, quoting *Florida v. Wells* (1990) 495 U.S. 1, 4 [110 S.Ct. 1632;109 L.Ed.2nd 1].)

In situations when an officer tows a vehicle, justification for that tow shall be documented in a report or the stored form (SPD 188) and in the CAD remarks.

Conclusion:

The decision to tow or impound may never be made simply as a pretext for locating contraband. Under the community caretaking doctrine, if the lawful owner or their designee has a valid driver's license and is physically present during the police contact, officers should release the vehicle unless articulable lawful circumstances exist that would prevent officers from doing so. Once towed, the tow hearing unit will follow their policy of releasing the vehicle back to the licensed registered owner or designated licensed driver pursuant to policy.