

TOWING, SEIZURE AND RELEASE **OF MOTOR VEHICLES**

Directive: **6.34**

Effective immediately, the following procedures will serve to guide officers in making decisions concerning when and how to tow, seize, and release motor vehicles. It is recognized that an infinite number of special circumstances may arise which can affect an officer's application of these procedures. Therefore, officers must be guided by these procedures while being mindful to minimize the expense for the City and vehicles' respective owners, and to build the trust and goodwill of the community.

I. TOWING

A. Traffic Movement Problems:

1. **To Assist Motorists** - When receiving a request from a stranded motorist, an officer should normally summon a tow truck from the towing agency under contract with the City of Wilmington, however, the motorist should be advised that he/she has the right to contact his/her own towing company. If the motorist specifically requests that another towing agency be contacted, the officer should honor the request provided no undue delay or hazard is created. No police report is needed in this instance.
2. **Accidents** - Vehicles disabled in accidents should normally be towed as in #1. If an accident report is submitted, the tow should be noted on the accident report.
3. **Obstructing Traffic** - If the owner is not present or cannot be located within a reasonable amount of effort, the vehicle should be ticketed and towed.
4. **Parked in Tow-Away Zones** - These vehicles are normally ticketed only, and not towed. However, unusual circumstances, such as to clear a parade route, they may be ticketed and towed.
5. **Parked in Fire Lanes** - Vehicles in this category will be ticketed under City Code, and in all cases will be towed whether or not the operator returns to move the vehicle.
6. **Blocking a Private Driveway** - After a complaint is received from the owner of the driveway, the

vehicle may be ticketed and towed pursuant to City Code. A reasonable effort should be made, however, to only ticket the vehicle, and to then, if the operator/owner is available, allow him to move the vehicle away from the driveway.

Whenever a MV is towed from private property by an authorized towing company, the towing company, within ten (10) days following the tow, shall notify the owner that the MV was towed and the location of same.

7. **Parking in Violation of Snow Emergency Regulations** - These vehicles may be towed pursuant City Code.
8. **OPERATING AN UNREGISTERED MOTOR VEHICLE**
When a motorist is stopped for operating an unregistered Motor Vehicle, in the absence of any other traffic offense or driver impairment, the vehicle will not be towed. Instead, the violator's copy of the traffic summons shall act as his authority to drive the Motor Vehicle to his place of residence, pursuant to Title 21, Section 2116.
9. **Operating a Vehicle Without Required Insurance**
When a officer encounter a vehicle being operated without required insurance, in violation of Title 21, Section 2118, the officer will issue a traffic summons to the vehicle owner, and allow the owner/operator to legally park the vehicle. If the owner/operator is unwilling/unable to legally park the vehicle, the vehicle will be towed pursuant to Title 21, Sections 2188(L) & 6901.
10. **Parking and/or Blocking Alleyways** -
To prohibit the parking of motor vehicles in alleys and in a manner so as to prevent ingress of egress by the operator of another Motor Vehicle to or from a parking space on private property adjacent to such alley and to authorize the towing of any Motor Vehicle parked in an alley in violation of Section 37-46 (A) (16).
11. There are many other situations in which officers may legally tow vehicles, but would normally not do so. The instances cited are not intended to limit the officers' capabilities, but rather to provide guidance for his discretionary actions.

B. Abandoned Vehicles and Scofflaws:

1. Abandoned on a Street, Highway, or Alley -

The City Code defines an abandoned vehicle as any vehicle parked on a street or highway which is not capable of moving under its own power, or with expired registration. It further defines an abandoned vehicle as any vehicle parked in a "No Parking" area for 24 hours or more, or in a limited parking area for at least 48 hours, or any place else on a street, highway, or alley for continuous period of at least seven (7) consecutive days.

Title 21 Section 4401 (b) further defines an abandon vehicle as any vehicle that is either (1) inoperable, dismantled, wrecked or which displays expired registration plates which are at least 30 days expired, or which display no registration plates, or from which major componets have been removed, is in such a state of disrepair as to be incapable of being operated in the manner for which it is designed and is situated on private property appearing to have been abandoned; or (2) which is inoperable, dismantled, wrecked or from which the major components have been removed and which shall have been placed upon any state or public highway or property or the property or roads of any political subdivision of the State or public highways within a municipality for a period in excess of 24 hours without being removed, shall be considered to be abandoned. Officers enforcing this section will chalk the vehicle, issue a warning ticket, and contact WILDOT at 571-5480.

- 2. Abandoned on Private Property - Title 21, Section 4402** authorized police to enter onto public or private property to ascertain ownership of any vehicle appearing to be abandoned that is either inoperable, dismantled, wrecked, or from which major components have been removed, or is in such a state of disrepair as to be incapable of being operated in the manner for which it was designed. Officers should notify WILDOT at 571-5480 concerning vehicles in this category. The CPA assigned to the abandoned car detail will then proceed with removal procedures outlined in Title 21, Sections 4402 and 4403. (Note: The tasks of Certified Mail Notification of the registered owner and affixing of a written notice to the vehicle, previously performed by the Department of Licenses and Inspection, will now be assumed by the abandoned car detail CPA.)

NOTE: A recent City Code amendment authorized the Commissioner of Licenses and Inspection, the Deputy Commissioner, and designated code enforcement officers to direct that abandoned motor vehicles be towed and impounded by the City's authorized towing agency.

3. **Scofflaws** - Since the Department of Finance has instituted a policy of immobilizing (booting) scofflaw vehicles, Department of Police Personnel will not normally become involved in this area. When the owner of a booted vehicle fails to respond to the Department of Finance within a prescribed period to pay the costs and have the boot removed, Finance personnel will arrange to have the vehicle towed pursuant to City Code, and will submit a Police Department vehicle report and impound form to the House Sergeant for approval.

C. Theft, Unauthorized Use, and Damage to Motor Vehicles:

1. **Stolen and Recovered Motor Vehicles** - If the owner of a recovered stolen vehicle cannot be contacted or is unable to respond within a reasonable period, the vehicle will be towed pursuant to City Code. In the event that an owner cannot be reached at the time of recovery, it will be the responsibility of the auto theft unit to notify the owner as soon as possible.
2. **Vehicles with Fictitious VINs or Displaying Fictitious License Plates** - Vehicles found to have altered or fictitious VINs will always be towed pursuant to Title 21, Section 6706. Vehicles found to be displaying fictitious tags may be legally parked if ownership is clear, with only the license plate being seized. If vehicle ownership is questionable, the vehicle may be towed pursuant to City Code. The Auto Theft Unit should be notified in each of these instances.

D. Arrests and Evidence:

1. In all cases of towing by members of this department, a Motor Vehicle Impound and notification form will be utilized. There will be two methods of completing the form, the first where the vehicle can be released to the owner with no "official" hold placed on the vehicle. The officer will mark the "vehicle towed" block and sign the appropriate line on the bottom. The second instance is where the vehicle is held as evidence, or a forfeiture of the vehicle will be

sought. In this case, it will be necessary for the officer and his/her supervisor to sign the form and to mark the "vehicle seized" block. This action is necessary to ensure that the facts are sufficient to warrant a "hold" placed on the vehicle.

2. **Operator Arrested** - A vehicle may be towed pursuant to Title 21, Section 6901, when the operator of the vehicle is arrested or the vehicle is parked or left standing in such a manner as to create a hazard or is interfering with the normal movement of traffic, or the operator/owner is unwilling or unable to legally park the vehicle.

An officer may legally park the vehicle, provided the operator gives his consent by signing the "At Scene Parking Authorization Release," (Subparagraph D, RCS 137-3-82). For further information, see Example "A".

3. **Seizure of a Vehicle as Evidence or in Forfeiture** - Seizure of a vehicle by police can occur for two reasons:
 - (1) When a temporary hold is placed on a vehicle to be used as evidence in connection with the commission of a crime, or
 - (2) when a hold is placed on a vehicle which the State intends to permanently take from its owner (forfeiture).

It is the responsibility of the investigating officer to contact the Attorney General's Office within 72 hours of the tow to obtain permission to hold the vehicle for forfeiture.

4. In cases where the Deputy Attorney General decides not to proceed with a forfeiture, the investigating officer will submit the appropriate supplemental report and he will also respond to Support Services and sign the bottom line of the original impound form, thereby indicating that the vehicle can be released. It will be the responsibility of Support Services personnel, to notify the vehicle's owner that the vehicle can be released.

5. **VEHICLES USED IN HIT AND RUN ACCIDENTS** - WHEN A STRIKING VEHICLE IN A HIT AND RUN ACCIDENT IS IDENTIFIED AND LOCATED, THE VEHICLE MAY BE TOWED AND HELD AS EVIDENCE PER CITY CODE. It will be the responsibility of the Hit and Run investigator to make the determination as to the hold on the vehicle. In all cases a determination should be made within ten (10) days, with Support Services being notified of the decision.

6. **Serious Accidents and Vehicle Processing** - In cases of serious personal injuries, where the accident scene is being held pending a hospital report, all investigators will contact the Data Center requesting a tow truck only after information is received which will indicate that it is no longer necessary to "hold the scene".

IN INCIDENTS WHERE VEHICLES ARE BEING "PROCESSED," ALL INVESTIGATORS WILL REFRAIN FROM CONTACTING DATA CENTER REQUESTING A TOW TRUCK, UNTIL THE VEHICLE IS SUFFICIENTLY PROCESSED AND THE TOW TRUCK DRIVER WILL BE ABLE TO TAKE CUSTODY OF THE VEHICLE UPON ARRIVAL.

II. VEHICLE RELEASE PROCEDURE:

A. Release Guidelines:

1. **Positive Identification** must be displayed by the person to whom the vehicle is to be released (i.e., driver's license, employment identification, Social Services Identification, etc., preferably with photograph). This is to prove identity only, not the legal right to drive the motor vehicle.
2. **Release to Owner** - The proper title or registration card must also be displayed. This would also include a temporary registration issued by the Department of Motor Vehicles for purposes of vehicle inspection.
3. **Release to Authorized Agent** - Records Division personnel are authorized to release vehicles only to the registered owner. In cases where the responding party is not the owner, the authorization to retrieve the vehicle must be cleared by the Traffic Supervisor on duty, or in his absence, by the Patrol Watch Commander.
4. During normal working hours it is the responsibility of Support Services Division personnel to release vehicles to the proper owner or agent. When Support Services Division are not working, it is the responsibility of the House Sergeant.

B. Vehicles to be Held from Release:

1. Vehicles held in seizure, when authorization is obtained from the Attorney General's Office.
2. **Vehicles Known to have Outstanding Tickets** During normal business hours, this information is obtainable by calling the City Finance Department. If the Department of Finance fails to answer, the vehicle will be released and Subparagraph "A" of the Vehicle Release Form (RCS 137-2-82) will be marked "no response".
3. **Scofflaws and Fire Zone Violators** - These vehicles will not be released until all fines are paid.
4. **Vehicles Towed for Leaving the Scene of an Accident** - These vehicles will be released only with the approval of the Hit and Run Investigator, or in his absence, the Traffic Supervisor on duty.
5. **VEHICLES TOWED FOR FICTITIOUS VINS OR LICENSE PLATES** - THESE VEHICLES WILL BE RELEASED ONLY WITH THE APPROVAL OF THE AUTO THEFT INVESTIGATOR.

C. On-Street Parking of Vehicles:

When an officer makes an arrest of a driver and there is parking available, the officer may, with the consent of the owner/operator, park the vehicle in a legal manner. This consent will be indicated by having the owner/operator sign Subparagraph "D" of RCS 137-3-82 in duplicate. One copy will be given to the owner/operator, and the other copy will be filed with the original report.

D. Expense Liability for Towing/Storage Charges:

Under normal circumstances, the owner of any motor vehicle towed by the police will be responsible for the towing and storage charges, as prescribed by law in Section I of this order. Any exceptional circumstances which suggest alternative payment must be authorized by the Commanding Officer of the Support Services Division, who has been designated as liaison with the towing contractor.

III. REPORT FORMS:

A. Motor Vehicle Impound Notification Form (RCS 56-11-78):

This form will be completed in every instance where a motor vehicle is towed, except if the vehicle is towed as a public service (as in the case of a vehicle disabled due to an accident or mechanical difficulties). Distribution of the form will be as follows:

Hard Copy -	Attach to vehicle windshield.
White Copy -	Attach to original report for transfer to Records Division, to be maintained in Impound Motor Vehicle File until the vehicle is released. When the vehicle is released, this copy will be attached to the release form and filed with the original report.
Remaining Copies -	To be placed in the Traffic Division box for distribution by Traffic Division.

B. Motor Vehicle Release Form (RCS 137-3-82):

This form replaces the old Motor Vehicle Release Form (RCS 137-4-79), and will be used in all cases where a vehicle is released by the Department of Police. Normally, street officers will use this form only to document the securing of permission from an owner/operator to legally park a vehicle on the street. In all other cases, the form will be prepared, in duplicate, by Records Division personnel, with the original filed with the incident report, and the copy given to the vehicle owner to be taken to the tow yard.

C. Motor Vehicle Release Notification Form (RCS 122-4-79):

This form will no longer be used.

IV. Inventories of Impounded Motor Vehicles

A. Purpose

The purpose of this section is to establish a uniform set of guidelines for conducting inventories of motor vehicles that are taken into custody by the Department of Police. The purpose of the inventory is to protect the

lawful owner's property and to avoid claims of theft or damage against the seizing officer.

Specifically the guidelines are intended to:

1. Protect the property of others while in police custody.
2. Protect the members of the Department of Police against claims or disputes over lost or stolen property.
3. Protect the members of the department from potential danger.
4. Respond to incidents of theft or vandalism.

An inventory is a caretaking function of the police and it is not designated, nor intended to be used, as a means of discovering evidence of a crime. If probable cause exists to believe that a vehicle contains evidence of a crime then a search should be conducted in one of the following manners:

- a. With a valid search warrant, or
- b. With the consent of the owner/operator or other person who has standing to consent, or
- c. Without a search warrant or consent:
 1. but, incident to a lawful arrest, or
 2. when exigency exists, or
 3. when some other exception to the warrant requirement exists.

Recent court decisions have allowed evidence of a crime to be used when discovered during the course of an inventory of a legally impounded vehicle when a policy for inventory exists. However, officers should be aware that when the inventory is found to have been conducted for the purpose of evidence an illegal search will have occurred.

B. Procedure

When a member of the Department of Police has occasion to impound a vehicle for any of the reasons outlined in Section I, of this Directive, they will conduct a complete and thorough inventory of the impounded vehicle. The inventory may be conducted:

1. At the scene,
2. At the police station, or
3. If circumstances do not permit either of the above, at a later time at the tow yard.

A checklist inventory form has been designed to aid in this procedure. Officers should complete the form every time a vehicle is impounded, and submit it along with other necessary paperwork documenting the incident. A notation should be made in the original report indicating that an inventory has been done, and that the inventory form has been completed. Officers making contact for a private tow will not conduct an inventory of the vehicle. Private tow is defined as any tow that is not required for investigative or evidential purposes.

The entire vehicle should be inventoried. Glove compartments, trunks, and containers, whether open or closed, should be inventoried for valuables. If the glove compartment, trunk, or containers within the vehicle are locked, and cannot be opened without damage, the officer should contact a supervisor. The supervisor will determine whether the trunk, glove compartment, or container should be forced open, based upon a consideration of the following:

1. whether there are reasonable, articulable grounds to believe that valuables are contained in one of these areas;
2. whether the nature of these valuables can be determined by simply looking at the outside of the glove compartment, trunk, or containers;
3. the extent of the probable damage to each.

If opened, contents of the trunk, glove compartment, and containers (suitcases, tool boxes, briefcases, etc.) located within the vehicle should also be completely inventoried and noted on the inventory form.

If a vehicle that is being impounded is locked, or otherwise secured, the impounding officers should note this on the form. The officer should attempt to secure written consent of the owner to open the vehicle, if obtaining such consent is practicable. If

the consent cannot be obtained forthwith, the officer should consult a supervisor, who will determine whether the vehicle will be opened based upon the guidelines set forth below. If a determination is made that the locked vehicle will not be opened, any property that can be noted without gaining entry to the vehicle, should be listed on the inventory form. If a secured vehicle is to be impounded, and the officers can see monies, and/or valuable jewelry in the vehicle, a supervisor should be consulted.

The supervisor will determine whether the locked vehicle should be forced open based upon consideration of the following:

1. Reasonable grounds to believe the vehicle contains valuables;
2. Whether nature of valuables can be determined by looking through windows;
3. The extent of the probable damage to the vehicle by forcing it open;
4. Whether the locked vehicle is located in a secure impoundment area unlikely to be vandalized.

At that supervisor's discretion, entry may be made into the vehicle in order to secure and safeguard the property. Once the vehicle has been entered, a complete inventory should then take place. Actions such as this should be documented and supported in the accompanying reports.

Items attached to the vehicle, such as accessories, should be listed on the inventory form. Examples might include: car phones, radar detectors, or expensive stereo systems.

C. Safeguarding Valuables

Any valuables that are discovered during the inventory should be held for safekeeping. If the owner can be located the property should be turned over to them with appropriate departmental receipt forms signed.

If the owner cannot be located, or is unable to retrieve the property in a timely fashion, the property should be submitted to the Support Services Division as:

1. Personal Property - if the owner can be

identified, or

2. Found Property - in the case of an abandoned vehicle where ownership cannot be determined.

In the case of an arrest situation where a vehicle is being impounded an officer would appropriately submit the valuables along with the rest of the prisoner's property. This type of action should be noted on the inventory form, on the prisoner's property form, and on whatever other appropriate report form is submitted. The disposition of any valuables located during an inventory search must be documented on the original incident report.

D. Discovery of Evidence of a Crime:

If in the course of conducting an inventory search, contraband or other evidence of a crime is discovered, the officer may continue his or her inventory of the vehicle in accordance with the criteria set forth above. However, should at any point the officer desire to exceed the scope of the inventory to search further and specifically for evidence of a crime, the officer should obtain a warrant. An exception to the warrant requirement is if:

1. the vehicle subject to impound has been taken into police custody pursuant to law or policy;
2. the officer's initial intrusion into the vehicle was to conduct an inventory of the vehicle;
3. exigent circumstances are present, and probable cause exists.