INTERDEPARTMENTAL CORRESPONDENCE

September 12, 2007
11.2

Pending
We should be operating under this.

TO: All Commanding Officers

FROM: Director, Office of Operations

SUBJECT: REVISED VEHICLE IMPOUND POLICY

The purpose of this correspondence is to rescind the moratorium on certain vehicle impounds and to revise Office of Operations Order No. 16, 2005. In 2005, the 9th Circuit Court of Appeals issued a decision affecting the impounding of vehicles (Miranda v. Cornelius). On August 21, 2007, the Department announced a temporary moratorium on certain vehicle impounds pending an opinion from the Office of the City Attorney. At issue was the Department's policy on certain vehicle impounds, the 30-day hold, and whether our policy constitutes an unreasonable seizure under the Fourth Amendment of the United States Constitution.

After a careful review of Department Policy, and in consideration of the Office of the City Attorney opinion, the Department has made minor modifications to the vehicle impound policy. Department employees will continue to enforce the provisions set forth in the California Vehicle Code, and when warranted, impound the vehicles of those drivers who are unlicensed or have a suspended or revoked license. However, in any circumstance involving the impounding of vehicles, officers shall be guided by what the court defined as the, "Community Caretaking Doctrine," which allows officers to take action based upon public safety, even if that action is not related to an investigation. The decision to impound any vehicle must be reasonable and in furtherance of public safety.

The below examples are but a few of many situations officers may encounter and the recommended enforcement actions:

R.D issues

A driver without valid license is the only occupant of vehicle.

- If the unlicensed driver is the sole occupant of the vehicle, it is both reasonable and in furtherance of public safety to prevent that driver from continuing the immediate and unlawful operation of the vehicle from the location of the traffic stop. If the traffic stop is conducted at a location other than the driver's residential driveway or a legal parking space in the vicinity of the driver's residence, impoundment would be warranted.

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Passengers are present in a vehicle where the driver is unlicensed.

- If one or more passengers are present in a vehicle driven by an unlicensed driver, but none of those passengers are validly licensed, impounding is also clearly justified based upon public safety. Similarly, even if there are licensed passengers in the vehicle, impounding that vehicle is justified if the registered owner cannot be contacted or does not give permission for one of the licensed passengers to operate the vehicle.
- If both the registered owner and a validly licensed driver are present in the vehicle and the registered owner gives permission for the licensed driver to operate the vehicle, impounding of the vehicle is not appropriate.

Impounding vehicles when the driver is arrested.

- Certain traffic stops may result in the driver being physically arrested. If there is a licensed passenger present in the vehicle that can lawfully assume control with the registered owner's permission, then impounding of the vehicle is not appropriate.
- The "Community Caretaking Doctrine" will, in most instances, justify impounding of the stopped vehicle if its location is impeding traffic, causing a hazard to other motorists, or is otherwise not legally parked. However, if the arrestee's vehicle is parked in a legal parking space where it is not posing a traffic hazard and is not likely to be a target for vandalism or theft, and the driver requests that the vehicle remain at the location, impounding the vehicle is not required.

However, once a vehicle is impounded and where legally mandated, the provisions associated with the 30-day hold will remain in effect. This directive is effective immediately, and a Department directive will soon follow.

If further information is needed, you may contact Commander Kirk J. Albanese, Assistant to the Director, Office of Operations, at (213) 847-1998.

EARL C. PAYSINGER, Assistant Chief
Director, Office of Operations

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OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 3 February 22, 2006

SUBJECT: PROCEDURE FOR CITING VIOLATIONS OF SECTIONS 12500 (a) AND 12951 (a) OF THE CALIFORNIA VEHICLE CODE

EFFECTIVE: IMMEDIATELY

PURPOSE: The Los Angeles Superior Court has advised the Department that they are experiencing a large number of cases where a traffic violator has been cited for Section 12500 (a) California Vehicle Code (CVC), (License Required – Unlicensed Driver) when the violator in fact had a valid driver license that could have been verified by the officer in the field. When this situation occurs, the violator is required to appear in court two times and this double appearance overloads the court calendars. Department Traffic Manual Section 1/107 makes the enforcement of an unlicensed driver offense mandatory.

This Order clarifies officers' responsibilities when citing violators for Sections 12500 (a) CVC (Unlicensed Driver) and 12951 (a) CVC (Driver License Not in Possession).

PROCEDURE:

I. OFFICER'S RESPONSIBILITIES. Officers issuing a Traffic Notice to Appear, Form 4.50.0, to a violator in the field shall adhere to the following procedures:

A. **No driver license in possession.** In a case when a violator does not possess a driver license, an officer shall:

* Make a reasonable attempt to verify the validity of the violator's driver license, including a Department of Motor Vehicles (DMV) inquiry via radio or Mobile Digital Terminal (MDT) when available;
* If the officer can reasonably determine the violator's identity and that his/her California Driver License status is valid, the officer may cite the violator for Section 12951 (a) CVC; and,

  Note: Section 12951 (a) CVC is a correctable violation unless the conditions of Section 40610 CVC are met.

* If the violator does not have any form of identification and the officer cannot reasonably identify the violator and verify his/her driver

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license status via a DMV inquiry, the officer **shall cite** or **arrest** the violator for 12500 (a) CVC. The officers **shall not** list a driver license or identification number on the Traffic Notice to Appear, Form 4.50.0, unless they are certain the number in fact corresponds to the violator.

Note: Section 12500 (a) CVC is a misdemeanor offense and is not a correctable violation. If the violator does not have a driver license or identification card, then the officer shall write the word "NONE" in the driver license box of the Traffic Notice to Appear, Form 4.50.0.

B. **California residency required.** According to 12505 CVC, it states that any person who establishes a permanent residency in California more than 10 days shall obtain California Driver License to operate a motor vehicle in California. In a case when a violator is an out-of-state driver, an officer shall ensure:

* The violator has a valid out-of-state driver license and a routine inquiry indicates the violator is a visitor to the state, the violator shall not be cited for Section 12500 (a) CVC; and,
* The violator has a valid out-of-state driver license and a routine inquiry indicates the violator is in fact now a California resident as defined in Section 12505 CVC, the officer shall cite the violator for Section 12500 (a) CVC.

C. **International and foreign driver licenses.** In a case when a violator is driving with a foreign driver license, an officer shall ensure:

* The violator's foreign driver license is valid and he/she is visiting the United States. In these cases, the violator shall not be cited for Section 12500 (a) CVC. In addition, a violator with a foreign driver license does not require an International Permit (also known as an International Driver License); and,
* If the violator only possesses an International Permit without a foreign driver license, the violator shall be cited for Section 12500 (a) CVC.

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Vehicle impound procedures, as delineated in Office of Operations Order No. 16, 2005, shall remain the same.

Questions regarding this Order may be directed to the Officer in Charge, Traffic Court Liaison Unit, Traffic Coordination Section, Special Operations Support Division, at (213) 485-3175.

AUDIT RESPONSIBILITY: The Commanding Officer, Detective Bureau, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

GEORGE GASCÓN, Assistant Chief
Director, Office of Operations

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