

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 14

July 30, 2021

**SUBJECT: COMMUNITY CARETAKING DOCTRINE AND THE VEHICLE  
IMPOUND PROCEDURES – REVISED**

**PURPOSE:** On June 21, 2017, the 9<sup>th</sup> Circuit United States Court of Appeals ruled in court case *Brewster v. Beck* that plaintiff Brewster's Fourth Amendment rights had been violated when her vehicle was impounded for 30 days pursuant to California Vehicle Code (CVC) Section 14602.6(a)(1), which authorizes the impounding of a vehicle when the driver has a suspended license.

Brewster loaned her vehicle to her brother-in-law, who was stopped by officers and was discovered to be driving without a license. When Brewster, who had a valid driver license, attempted to recover her vehicle, the Department refused to release it before the 30-day holding period had elapsed.

In this case, the court stated the exigency that justified the initial seizure vanished once the vehicle was impounded and Brewster provided proof of ownership and a valid driver license. While the initial impound fell under this exception, the continued impoundment interfered with Brewster's Fourth Amendment rights.

The court suggested that vehicles could be impounded under CVC Section 22651(p), which authorizes impoundment when the driver does not have a valid driver license. The Department Manual will be changed to be consistent with this ruling.

**PROCEDURE: COMMUNITY CARETAKING DOCTRINE AND THE VEHICLE  
IMPOUND PROCEDURES – REVISED.** Department Manual Section 4/222.05, *Community Caretaking Doctrine and the Vehicle Impound Procedures*, has been revised and is attached with the revisions indicated in italics.

**AMENDMENT:** This Order amends Section 4/222.05 of the Department Manual.

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



MICHEL R. MOORE  
Chief of Police

Attachment

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**222. IMPOUNDING VEHICLES.**

**222.05 COMMUNITY CARETAKING DOCTRINE AND THE VEHICLE IMPOUND PROCEDURES.**

**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. *Any time a vehicle is impounded, Department personnel shall document the Community Caretaking Doctrine justification in the Remarks Section of the Vehicle Report, California Highway Patrol (CHP) Form 180.*

***Unlicensed Driver and Driver with a Suspended/Revoked License Impound Authorities.*** *California Vehicle Code (CVC) Section 22651(p) 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:*

- *Driving without a valid California Driver License (unless the driver is a nonresident with a valid driver license or otherwise exempt under the CVC);*
- *Driving with an expired, withheld, or out-of-class California Driver License;*
- *Driving with a suspended or revoked license; or,*
- *Driving with a restricted license pursuant to CVC Sections 13352 or 23575, and the vehicle is not equipped with a functioning, certified interlock device.*

***Note:*** *When the driver is driving on a restricted driver license pursuant to CVC Sections 13352 or 23575, and the vehicle is not equipped with a functioning, certified interlock device, officers shall impound the vehicle under CVC Section 22651(p), and*

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*shall either effect a custodial arrest of the driver or issue a Traffic Notice to Appear citation in the field.*

*The name and driver 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 CVC Section 14604(a), "Knowingly Allowing Unlicensed Driver to Drive."*

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

- The registered owner or *his or her* designee has a valid California Driver License or is a nonresident with a valid *driver* license or otherwise exempt under the *CVC*;
- 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 not expired over six (6) months.

**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, if the traffic stop is conducted in the driver's residential driveway or in the immediate vicinity of the driver's residence but the driver is not the registered owner, officers must consider the totality of the circumstances to determine if impoundment is reasonable.

When the vehicle cannot be released to a licensed driver, the vehicle shall be impounded pursuant to *CVC* Section 22651(p) or, if the vehicle's registration is expired over six (6) months, pursuant to *CVC* Section 22651(o), 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.

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

**Impounding Vehicles Driven by Habitual Driving Under the Influence Offenders.**

*California Vehicle Code* Section 14602.8(a)(1) authorizes an officer to impound a vehicle from a driver when it is determined that a person has been convicted of *CVC* Section 23140, Juvenile Driving Under the Influence of Alcohol; *CVC* Section 23152, Driving Under the Influence of Drugs or Alcohol; or *CVC* Section 23153, 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 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.

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The officer shall immediately cause the removal and seizure of the vehicle that such a person was driving.

A vehicle impounded pursuant to the aforementioned section shall be impounded for CVC Section 14602.8 based on the following time periods:

- 5 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 CVC Sections 23140, 23152 or 23153 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 CVC Section 14602.8(d).

**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 the “*Unlicensed Driver and Driver with a Suspended/Revoked License Impound Authorities*” section of this Order.

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 meets the Department’s reporting criteria, officers shall complete the Traffic Collision Report, CHP 555. 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.

If the violator challenges the citation during a subsequent court proceeding, the issuing officer shall be responsible for contacting the witnessing parties and requesting their attendance in court. When the unlicensed driver does not possess valid identification, officers shall advise the other involved 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 CVC Section 12500(a) or CVC Section 14601(a), or other appropriate CVC section(s) for driving when the privilege is suspended or revoked.

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**Impounding Vehicles at Driving Under the Influence Checkpoints.** The following procedures apply if the driver's only offense is a violation of *CVC* Section 12500, even if the driver has a prior misdemeanor conviction, failure to appear, or warrant for *CVC* Section 12500. 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 *Driving Under the Influence* (DUI) checkpoint operation, or the officer is able, without delay, to identify the registered owner and obtain *his or 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 License or is a nonresident with a valid license or is otherwise exempt under the *CVC*; and,
- The registered owner authorizes the licensed driver to drive the vehicle.

The name and driver 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 *or in the Arrest Report narrative*.

*When the vehicle cannot be released to the registered owner or his or her designee, officers shall impound the vehicle under the authority of CVC Section 22651(p). Officers impounding a vehicle under CVC Section 22651(p), shall either effect a custodial arrest of the driver or issue a Traffic Notice to Appear citation, Form 04.50.00.*

**Impounding Vehicles When the Driver is Arrested.** *California Vehicle Code* Section 22651(h)(1) authorizes an officer to impound a vehicle *when* a driver has been arrested and taken into physical custody. However, officers must also determine if the totality of the circumstances supports impoundment of the vehicle under the Community Caretaking Doctrine.

When a driver is arrested, the vehicle **should not** be impounded under the following circumstances:

- If the arrestee is the registered owner and the vehicle is parked in the arrestee's residential driveway or a legal parking space in the immediate vicinity of the arrestee's 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, *CVC* Section 22651(h)(1) shall be used as the impound authority. If the driver arrested has prior DUI convictions, officers shall be guided by *CVC* Section 14602.8(a)(1).

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*Impounding Vehicles Engaged in Street Racing and Reckless Driving. California Vehicle Code Section 23109.2 authorizes officers to impound a vehicle engaged in street racing and reckless driving for up to 30 days. Officers seeking to impound the vehicle shall ensure that a custodial arrest of the driver is affected. Community Caretaking Doctrine considerations shall always be considered when making a determination to impound a vehicle engaged in street racing and/or reckless driving.*