

Vehicle Towing

502.1 PURPOSE AND SCOPE

This policy provides guidance related to vehicle towing. Nothing in this policy shall require a member of this department to tow a vehicle.

502.2 POLICY

The Town of Cheektowaga Police Department will tow vehicles when appropriate and in accordance with the law.

502.3 REMOVAL OF VEHICLES DUE TO HAZARD

When a vehicle should be towed because it presents a hazard, the owner or operator should arrange for the towing. Department members may assist by communicating requests through Dispatch to expedite the process.

If the owner or operator is unable to arrange for towing and the vehicle presents a hazard, the vehicle may be towed at the direction of the department member (Vehicle and Traffic Law § 1204).

Vehicles that are not the property of the Town should not be driven by department members unless it is necessary to move the vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or comply with posted signs.

502.4 ARREST SCENES

Whenever the owner or operator of a vehicle is arrested, the arresting officer should provide reasonable safekeeping by leaving the vehicle secured and having the vehicle towed, such as when the vehicle presents a traffic hazard or the vehicle would be in jeopardy of theft or damage if left at the scene.

Officers are not required to investigate whether alternatives to towing a vehicle exist after an arrest. When considering whether to leave a vehicle at the scene, officers should take into consideration public safety as well as the reasonable safety of the vehicle and its contents.

The following are examples of situations where a vehicle could be released at the scene if appropriate:

- The vehicle is parked on private property, on which the arrestee or owner is legally residing, or the property owner does not object to the vehicle being parked at that location.
- The arrestee or owner of the vehicle requests that it be released to a person who is present, willing and able to legally take control of the vehicle.

502.5 VEHICLES RELATED TO CRIMINAL INVESTIGATIONS

Officers should tow vehicles that are needed for the furtherance of an investigation or prosecution of a case, or that are otherwise appropriate for seizure as evidence. Officers should make

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reasonable efforts to return a recovered stolen vehicle to its owner rather than have it towed. This applies to vehicles not needed for evidentiary purposes. The vehicle must be photographed as per [See attachment: S 450.pdf](#) Photographs may be completed by the Investigating/Reporting Officer, Traffic Unit member, CSI or a Supervisor. The Investigating/Reporting Officer will allow a reasonable time period for the owner to recover the vehicle. If an owner cannot be notified, the vehicle will be towed back to the zone tower's lot. The Investigating/Reporting Officer will document, on a supplemental police report, their actions taken. The Police Records Sergeant will be notified of any recovered stolen vehicles that were not released to the owner by the investigating/reporting officer. This policy applies to vehicles stolen from the Town of Cheektowaga and reported to the Cheektowaga Police Department as a stolen vehicle.

Any vehicle being held for processing or investigation must be towed to the Cheektowaga Town campus police impound lot. No vehicles are to be towed or held for punitive reasons, or to gain cooperation from an involved subject. Once the vehicle is processed for evidence and the vehicle itself does not need to be held as evidence, it should be released to the owner who has provided the necessary paperwork for the vehicle.

It is the policy of the Police Department that whenever an arrest is made for driving while intoxicated, the vehicle will be towed and/or impounded and held for 12 hours as per Erie County Local law 2-2004. The vehicle may be turned over to a third party owner at any time.

502.6 RECORDS

Records Management Unit members shall ensure that pertinent data regarding a towed vehicle is promptly entered into the appropriate database.

A vehicle towed after an arrest or upon the issuance of a summons or an appearance ticket for the crime of aggravated unlicensed operation of a motor vehicle shall be entered into the New York Statewide Police Information Network (NYSPIN) (Vehicle and Traffic Law § 511-b).

502.6.1 VEHICLE STORAGE REPORT

Department members towing a vehicle shall complete a towed vehicle inventory report. The report should be submitted to the Records Management Unit as soon as practicable after the vehicle is towed.

502.6.2 REPORT OF VEHICLES TO NYSPIN

If the vehicle has been reported stolen, the officer ordering the tow shall ensure the theft, recovery or impound is reported to NYSPIN. The report shall, if possible, include (Vehicle and Traffic Law § 424):

- (a) The VIN.
- (b) The date of theft, recovery and impound of the vehicle.
- (c) The license plate number.

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- (d) The name, address and telephone number of the location where the vehicle is being stored.
- (e) The location of the theft and location of the recovery.

502.7 TOWING SERVICES

Members shall not show preference among towing services that have been authorized for use by the Department. Members will contact the authorized zone towing service as determined by the Chief of Police and the Town Board.

502.8 VEHICLE INVENTORY

The contents of all vehicles towed at the request of department members shall be inventoried and listed on the inventory report. When reasonably practicable, photographs may be taken to assist in the inventory.

- (a) An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, any unlocked glove box, other accessible areas under or within the dashboard area, any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats.
- (b) In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in any other type of unlocked compartments that are a part of the vehicle, including unlocked vehicle trunks and unlocked car top containers.
- (c) Any locked compartments including, but not limited to, locked glove compartments, locked vehicle trunks, locked hatchbacks and locked car-top containers should be inventoried, provided the keys are available and released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.
- (d) Closed containers located either within the vehicle or any of the vehicle's compartments will be opened for inventory purposes if the container can be opened without damaging it.

Members should ask the occupants whether the vehicle contains any valuables or hazardous materials. Responses should be noted in the inventory report.

When practicable and appropriate, cash, jewelry or other small valuables located during the inventory process should be removed from the vehicle and given to the owner, or booked into property for safekeeping, in accordance with the Records Management Unit Policy. A copy of the Records Management Unit property receipt should be given to the person in control of the vehicle or, if that person is not present, left in the vehicle.

These inventory procedures are for the purpose of protecting the vehicle owner's property, providing for the safety of department members and protecting the Department against fraudulent claims of lost, stolen or damaged property.

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Towing a vehicle in order to perform an inventory should not be used as a pretext for an evidence search. Nothing in this policy prevents the towing of a vehicle that would occur for reasons independent of any suspicion that the vehicle may contain evidence if it is otherwise justified by law or this policy.

502.9 SECURITY OF VEHICLES AND RETRIEVAL OF PROPERTY

If the search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, the department member conducting the search shall take such steps as are reasonably necessary to secure or protect the vehicle or property from such hazards.

Unless it would cause an unreasonable delay in towing the vehicle or create an issue of officer safety, reasonable accommodations should be made to permit the owner, operator or occupant to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) that are not considered evidence or contraband.

Members who become aware that a vehicle may have been towed by the Department in error should promptly advise a supervisor. Supervisors should approve, when appropriate, the release of the vehicle without requiring the owner or his/her agent to request a hearing to contest the tow.

Attachments

S 450.pdf

S 450.10 Disposal of stolen property.

1. When property, other than contraband including but not limited to those items subject to the provisions of sections 410.00, 415.00, 420.00 and 420.05 of this chapter, alleged to have been stolen is in the custody of a police officer, a peace officer or a district attorney and a request for its release is made prior to or during the criminal proceeding, it may not be released except as provided in subdivisions two, three and four of this section. When a request is made for the return of stolen property under this section, the police officer, peace officer or district attorney in possession of such property must provide written notice to the defendant or his counsel of such request as soon as practicable. Such notice shall advise the defendant or his counsel of the date on which the property will be released and the name and address of a person with whom arrangements can be made for the examination, testing, photographing, photocopying or other reproduction of said property.

2. Both the defendant's counsel and the prosecutor thereafter shall make a diligent effort to examine, test and photograph, photocopy or otherwise reproduce the property. Either party may apply to the court for an extension of any period allowed for examination, testing, photographing, photocopying or otherwise reproducing the property. For good cause shown the court may order retention of the property for use as evidence by either party. Unless extended by a court order sought by either party on notice to the other, the property shall be released no later than the time periods for retention set forth in subdivisions three and four of this section to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. Unless a court, upon application of either party with notice to the other, orders otherwise, the release of property in accordance with

the provisions of this section shall be unconditional.

3. Except as provided in subdivision four of this section, when a request is made for the release of property described in subdivision one of this section, the property shall be retained until either the expiration of a fifteen day period from receipt by the defendant or his counsel of the notice of the request, or the examination testing and photographing, photocopying or other reproduction of such property, by the parties, whichever event occurs first. The fifteen day period may be extended by up to five additional days by agreement between the parties.

4. (a) Except as provided in paragraphs (b) and (c) of this subdivision and in subdivision eleven of this section, when a request is made for the release of property described in subdivision one of this section, and the property shall consist of perishables, fungible retail items, motor vehicles or any other property release of which is necessary for either the operation of a business or the health or welfare of any person, the property shall be retained until either the expiration of a forty-eight hour period from the receipt by the defendant's counsel of the notice of the request, or the examination, testing and photocopying, photographing or other reproduction of such property, by the parties whichever event occurs first. The forty-eight hour period may be extended by up to twenty-four additional hours by agreement between the parties. For the purposes of this section, perishables shall mean any property likely to spoil or decay or diminish significantly in value within twenty days of the initial retention of the property.

(b) If, upon oral or written application by the district attorney with notice to the defendant or his counsel, a court determines that immediate release of property described in paragraph (a) of this subdivision is required under the attendant circumstances, the court

shall issue an order releasing the property and, if requested by either party, setting, as a part of such order, any condition appropriate in the furtherance of justice.

(c) A motor vehicle alleged to have been stolen but not alleged to have been used in connection with any crime or criminal transaction other than the theft or unlawful use of said motor vehicle, which is in the custody of a police officer, a peace officer or a district attorney, may be released expeditiously to its registered owner or the owner`s representative without prior notice to the defendant. Before such release, evidentiary photographs shall be taken of such motor vehicle. Such photographs shall include the vehicle identification number, registration on windshield, license plates, each side of the vehicle, including vent windows, door locks and handles, the front and back of the vehicle, the interior of the vehicle, including ignition lock, seat to floor clearance, center console, radio receptacle and dashboard area, the motor, and any other interior or exterior surfaces showing any and all damage to the vehicle. Notice of such release, and the photographs taken of said vehicle, shall be furnished to the defendant within fifteen days after arraignment or after counsel initially appears on behalf of the defendant or respondent, whichever occurs later.

5. If stolen property comes into the custody of a court, it must, unless temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the court.

6. If stolen property has not been delivered to the owner, the court before which a trial is had for stealing it, may, on proof of his title, order it to be restored to the owner.

7. If stolen property is not claimed by the owner, before the

expiration of six months from the conviction of a person for stealing it, the court or other officer having it in custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioner of social services, or in the city of New York, to the commissioner of social services, to be applied for the benefit of the poor of the county or city, as the case may be.

8. Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of an offense, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of property taken, one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the court in which the criminal action is pending.

9. The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this subdivision, and it shall be the duty of every officer into whose possession such property may come, to deliver the same forthwith to the person so designated.

10. Where there has been a failure to comply with the provisions of this section, and where the district attorney does not demonstrate to the satisfaction of the court that such failure has not caused the defendant prejudice, the court shall instruct the jury that it may consider such failure in determining the weight to be given such evidence and may also impose any other sanction set forth in subdivision one of section 240.70 of the criminal procedure law; provided, however,

that unless the defendant has convinced the court that such failure has caused him undue prejudice, the court shall not preclude the district attorney from introducing into evidence the property, photographs, photocopies, or other reproductions of the property or, where appropriate, testimony concerning its value and condition, where such evidence is otherwise properly authenticated and admissible under the rules of evidence. Failure to comply with any one or more of the provisions of this section shall not for that reason alone be grounds for dismissal of the accusatory instrument.

11. When a request for the release of stolen property is made pursuant to paragraph (a) of subdivision four of this section and the defendant is not represented by counsel the notice required pursuant to subdivision one of this section shall be personally delivered to the defendant and release of said property shall not occur for a period less than five days: from (a) the delivery of such notice; or (b) in the case of delivery to such person in custody, from the first appearance before the court, whichever is later.