



CMPD POLICE LAW BULLETIN

A Police Legal Newsletter

January-February 2006

Volume 25, Issue 1

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Forward: In this issue we examine which agencies are responsible for removing abandoned vehicles from right of ways on public streets and highways within the City and County. The new felony of failure to return a rental vehicle and the District Attorney's Office papering requirements for the new law are explained. Procedures for dealing with seizure of N.C. drivers' licenses and plates in light of electronic pick-up notification are also discussed. In the "there ought to be a law" category, we squelch rumors that new laws were enacted concerning cell phone use and cigarette littering while driving. City Code violations involving the consumption of beer and wine will be explained. We'll give officers practical advice on how to deal with child custody situations. Finally, we'll review a new South Carolina law concerning pursuits by North Carolina law enforcement into South Carolina.

ABANDONED VEHICLES ON THE RIGHT OF WAY

Questions have arisen regarding which agency is responsible for removing abandoned vehicles on the right of way on public streets and highways within Mecklenburg County. The answer depends on the location of the vehicle. However, if the abandoned vehicle creates a traffic hazard or violates parking laws/ordinances, it may be immediately towed.

Under G.S. § 20-161(e), when a vehicle is parked or left standing on the right of way of a public street or highway for 48 hours or more, law enforcement may have the vehicle towed. Towing is also permitted under the City and County Codes after a 7-day waiting period. When the vehicle is towed by a law enforcement agency, G.S. § 20-219.11 requires that notice be sent to the registered owner.

Below are Agency responsibilities based on location, applicable waiting periods and tagging requirements for abandoned vehicles:

- 1. CMPD Primary Responsibility**
I-277 (John Belk/Brookshire Freeways)
Independence Boulevard
Billy Graham Parkway
Any street or portion of a street where the speed limit is 55 mph or greater.
EXCEPT: I-85, I-77 and I-485 where SHP has primary responsibility.
Note: 48 hour waiting period, green tag placed on vehicle.



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- 2. **CMPD and Mecklenburg County Code Enforcement Shared Responsibility**
Streets in the unincorporated area of Mecklenburg County. CMPD officers may take action (48 hour waiting period, green tag) or contact Mecklenburg County Code Enforcement.

Mecklenburg County Code Enforcement

Note: 7 day waiting period, yellow tag placed on vehicle

Contacts: North of I-85, Ron Featherstone, 704-432-2529, South of I-85, Russ Fischer, 704-814-0589.

- 3. **SHP Primary Responsibility**

I-85, I-77 and I-485

Note: 48-hour waiting period, orange tag placed on vehicle.

- 4. **Charlotte Code Enforcement Primary Responsibility**

All streets within City limits

EXCEPT: those listed as CMPD's primary responsibility

Note: 7 day waiting period, yellow tag placed on vehicle

Contact: Wendy Gigante, 704-336-4211, wgigante@ci.charlotte.nc.us.

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ABANDONED VEHICLE TOWING - CMPD PROCEDURE

- Place green 48-hour tag on vehicle noting the date and time (towing tags found at Property Control).
- After 48 hours the vehicle may be towed, contact the dispatcher to obtain QL-ABN/V Event Code and request zone wrecker.
- Complete KBCOPS incident report, registered owner listed as the "Victim", officer as "Reporting Person" and offense as "Vehicle Recovery".
- State mandated post-towing procedures require written notice by CMPD to the registered owner within 24 hours if N.C. registration and 72 hour notice for all other state registrations.
- State law also recommends attempting to contact the registered owner by phone.
- See Directive 600-13 "Towing Vehicles".

CHARLOTTE-MECKLENBURG POLICE

THIS VEHICLE HAS BEEN INSPECTED AND TAGGED BY THE CHARLOTTE-MECKLENBURG POLICE AS A SERVICE TO THE OWNER. FAILURE TO REMOVE THIS VEHICLE WITHIN 48 HOURS OF THE DATE NOTED BELOW MAY RESULT IN THE VEHICLE BEING TOWED (PURSUANT TO N.C. GENERAL STATUTES) AND STORED FOR SAFEKEEPING AT THE OWNER'S EXPENSE.

Date: _____ Time: _____

Vehicle: _____ Lic. or Vin. _____

Remarks: _____

Officer/Code No.: _____

DISREGARD THIS NOTICE IF VEHICLE IS REMOVED WITHIN 48 HOURS.

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FAILURE TO RETURN RENTAL VEHICLE

Effective December 1, 2005, failure to return a rental vehicle under G.S. § 14-167 is a Class H felony when the value of the vehicle exceeds \$4,000.00. Under G.S. § 20-102.2, law enforcement must enter the vehicle into NCIC, and must attempt to notify the reporting party by telephone of the location and condition of any recovered vehicle.

Cases involving rental vehicles that qualify for felony charges must be papered with the District Attorney's Office Crime Against Property Unit. As part of the case investigation and papering process, officers must do the following: 1) show a photographic line-up to the rental car company employee who handled the transaction with the suspect, 2) obtain a statement from that employee, and 3) obtain a copy of the rental contract.

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PLATE AND LICENSE PICK-UP ORDERS

G.S. § 20-45 authorizes an officer who receives electronic notification via the DCI network of a "pick-up order" to seize a **North Carolina** driver's license or vehicle license plate. An officer may seize a driver's license or license plate pursuant to a pick-up order, even if the driver objects to the seizure. An officer should not enter onto private property in order to seize a driver's license or license plate without consent or a search warrant.

An officer must do the following after seizing a driver's license or license plate:

1. Complete Form **DL-53A** (available in Property Control), give the Pink copy to the vehicle operator, and retain the White copy.
2. The officer should check the appropriate block(s) on the DL-53A form. Block #1 for N.C. driver's license, block #5 for license plate (indicate the plate number).
3. The driver's license and/or license plate and the Yellow DL-53A copy then must be turned into the **CMPD Records Division** at headquarters **as soon as possible**. Records must notify DMV within forty-eight (48) hours of the seizure. The driver's license and/or license plate may be kept as evidence if needed for a criminal case.
4. The Records Division will turn the driver's license and/or license plate in to DMV.
5. In the event an officer receives a pick-up order for a driver's license, as well as a license plate, both may be submitted together on the same DL-53A form.

In the event a plate is seized as the result of a search or search warrant, as opposed to an ordinary traffic stop, the person in charge of the plate must also be given a copy of the CMPD Property Report Form, pursuant to CMPD Directive 500-004, as well as the pink copy of the DL-53A form.



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DO NOT seize the following based upon a DCI pick-up order:

- Out-of-state driver's license or license plate.
- North Carolina Identification Card.

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WAIVABLE CHARGES ON TWO CITATIONS = TWO COURT COSTS

The Administrative Office of the Courts and the Conference of Chief District Court Judges set forth the rules associated with citations, fines and court costs. If two citations are issued with waivable offenses, the individual charged must pay two court costs if they wish to waive their appearance.

Other citation fine/court cost rules:

1. A maximum of two (2) charges may be written on any one citation.
2. When two (2) waivable charges are written on one citation, the amount owed is the higher of the two (2) fines plus the costs of court.
3. In order to cite a person for more than two (2) offenses, additional citations must be written.
4. Each additional citation requires an additional fine and costs of court.
5. In the event a special costs of court applies (i.e., seat belt violation = \$75.00), the higher costs of court for the two charges listed on the citation should be used.

EXAMPLE

An officer wants to cite a person for speeding 47/35 MPH, no operator's license, and no inspection sticker. Those violations are all waivable and carry the following fines:

- 47/35 MPH = \$30.00 + costs;
- NOL = \$50.00 + costs;
- Inspection = \$25.00 + costs.

The correct citation procedure is as follows:

Citation 1: 47/35 MPH and NOL. Fine = \$50.00, Costs of Court = \$110.00
Total amount = \$160.00
Citation 2: Inspection. Fine = \$25.00, Costs of Court = \$110.00
Total amount = \$135.00

Total to waive court appearance and pay off both citations: \$295.00

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CELL PHONE USE AND CIGARETTE LITTERING WHILE DRIVING

The Police Attorney's Office has received calls asking what North Carolina law makes it illegal to use a cell phone while driving a vehicle. There is **no such law**. Although the General Assembly considered regulating or prohibiting the use of cell phones while driving, no law was enacted. Also, it has been rumored that there is now a \$500.00 fine for throwing a cigarette from a vehicle. Again, this is **not** the case. Throwing a cigarette from a vehicle constitutes littering under G.S. § 14-399, the amount of the fine depends on which section of the statute is charged:

G.S. § 14-399(c), misdemeanor/intentional = \$250.00 + costs of court

G.S. § 14-399(c1), infraction/unintentional = \$50.00 + costs of court

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CONSUMPTION OF BEER AND WINE AND CITY CODE VIOLATIONS

Section 15-3(b) of the City Code prohibits the **consumption** of beer ("malt beverage") and wine ("unfortified wine") on any **public** street or sidewalk in the City. Section 15-3(d) of the Code also prohibits the **possession** of an open container of beer or wine on a public street or sidewalk. Under these sections, "public sidewalk" refers to sidewalks maintained by the City and located adjacent to public streets.

Section 15-3(c) of the Code prohibits the **consumption** of beer and wine on the **private business** premises of another without permission of the owner or person in control of such premises, including private sidewalks and parking lots. This requires the owner or person in control of the business property to advise the individual in the officer's presence to cease consuming or be charged with a violation of Section 15-3(c). The owner or person in charge would have to be willing to testify in court if the individual is charged.

Apartment complexes offer difficulties in enforcement of Section 15-3(c) because tenants are "persons in control" authorized to allow guests on the premises and permit consuming on the premises. Even if the landlord prohibits consuming in a common area, it is an issue between the landlord and the tenant and not a violation of Section 15-3(c). A CMPD officer may not rely on Authorization to Act as an Agent to support this charge on private property.

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CHILD CUSTODY DISPUTES BETWEEN PARENTS- LIMITED ROLE OF LAW ENFORCEMENT

For the majority of child custody disputes between parents, the officers' response should include:

1. Maintaining the peace.



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2. Verifying child's safety, such as going to the child's location and confirming that the parent can care for the child. If there is a question as to the child's physical safety, Child Protective Services (CPS) should be notified to determine placement. ***See Note below**
3. A child should not be removed from the parent by the officer.
4. Parents should be referred to civil court.

***Note:** Officers may take temporary custody of a juvenile pursuant to G.S. § 7B-500 if there are reasonable grounds to believe the juvenile is abused, neglected or dependent and that the juvenile would be injured or could not be taken into custody if it was necessary to obtain a court order. CPS should be contacted immediately for placement of the child.

Officers may also take an infant under seven days into temporary custody if voluntarily delivered by the infant's parent who does not express an intent to return for the infant, as set out in G.S. 7B-500.

Officers may also encounter orders issued pursuant to G.S. §7B-504 for nonsecure custody due to abuse, neglect or dependency directed to an officer or the Department of Social Services. These orders include provisions placing the juvenile with DSS or an appropriate relative, with a specified time in which the juvenile may remain in custody. Please contact the Police Attorney's office if you encounter such an order for service and need assistance.

SOME TYPICAL SITUATIONS ARE LISTED BELOW:

A. Custody order with language "law enforcement officer to/may assist":

Frequently, an officer may be presented with a court order regarding child custody that will have some general language that says "law enforcement to/may assist" the parent in obtaining custody of the child. This phrase does **not** allow the officer to remove the child from one parent to give to the other parent or to force a parent to return a child. The parent may be in civil contempt but the officer is **not** empowered to physically remove a child from a parent by such an order because enforcement is a civil matter. **Officers are not statutorily authorized to enforce a custody order.**

There is a special provision under G.S. §50A-311 that provides for a court to issue a warrant to take physical custody of a the child if the petitioner (not an officer, but the parent) files a verified application with the court alleging that the child is imminently likely to suffer serious physical harm or be removed from the state.

B. Custody order and parent late in returning child:

Generally, this situation does not constitute Abduction of Children under G.S. §14-41, when a parent does not comply with visitation hours or days set out in a child custody order or agreement. A violation by keeping a child an extra day, or returning the child a few hours late, is **not** a crime but is enforced by civil contempt and the parent should be referred to civil court. Each situation is different, however, so officers shall consult Family Services or the Police Attorney's office if there are questions.



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C. No custody order:

This situation occurs when there is a dispute between parents but there is no custody order and the parents were never married. Generally, the biological parents of a child have basically equal custody rights to the child in the absence of a custody order. The officer's role is merely to keep the peace and not remove the child from one parent to give to the other parent. The officer's response would be the same even if the child is located with an appropriate relative of one of the parents. If there is some concern about the child's welfare, the officer should take steps to verify the child's safety including contacting Child Protective Services.

D. Transporting child outside of state:

G.S. §14-320.1 makes it a felony for any person with the intent to violate a court order, to take or transport a child outside of the state or to keep a child outside of the state. Keeping a child outside of the state in excess of 72 hours is prima facie evidence that the person intended to violate the order.

E. Out of state custody orders:

Child custody orders from other states will generally be enforced by North Carolina through a registration process which requires notice to the other party. Violations of these orders are also enforced by civil contempt. Officers faced with an out of state child custody order should keep the peace and ensure the safety of the child. These orders do not allow the officer to remove a child from a parent.

NOTE: This article is intended to address the most common situations encountered by child custody orders issued as a result of separation, divorce or child support issues. There are many variations in these orders so please contact the Police Attorney's office for guidance if you have questions.

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NEW SOUTH CAROLINA LAW

Effective February 17, 2006, South Carolina permits North Carolina law enforcement officers in pursuit of a person who is in immediate and continuous flight from the commission of a felony to enter and arrest the individual in South Carolina. The arrested person then must be taken to a South Carolina judicial official.

This new law will require changes in the CMPD Directives as well as operational changes. The law will also allow South Carolina law enforcement to enter North Carolina under G.S. § 15A-403. **Until the Directive and operational procedures have been changed, Directive 600-022 "Pursuit Driving" is still in effect, and CMPD will disengage from a pursuit at the South Carolina state line in accordance with Directive 600-022 Section VI. B "Pursuits in South Carolina".**

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