

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 1 of 10



### Contents

[How Should Tow Trucks Be Labeled?](#)

[The New Division Wrecker Contract](#)

[Reminder of When Vehicles May Have a Hold Placed On Them by an Officer](#)

[Tows Under the City Division Wrecker Contract Compared With Tows Under the City Ordinances](#)

[Sixth Amendment Right to Counsel / Attachment / Initial Appearance Before a Magistrate](#)

[Recent Amendment to DV Law](#)

[Pending Bills Before The General Assembly](#)



**Forward:** In this edition, the emphasis is on vehicular towing. We examine the issue of labeling tow trucks under a recently enacted State statute, discuss the new Division Wrecker Contracts which went into effect on June 1, 2008, and compare tows under the City contracts with tows regulated by City ordinances. A brief article reminds officers when they can place a hold on a motor vehicle.

We also touch on recent legal developments of interest. First, we brief an important, recent U.S. Supreme Court decision. Second, we review an amendment to the law governing law enforcement agency responsibilities towards victims of domestic violence. And third, we summarize some bills of interest to law enforcement that are pending before the North Carolina General Assembly.

### HOW SHOULD TOW TRUCKS BE LABELED?

Last year, the North Carolina General Assembly passed a revision to § 20-101 that added a provision concerning the required markings on tow trucks. Due to some reported confusion in CMPD over these new provisions and what they mean on a practical level, this article will address a few of the most asked-about issues dealing with the new law. It is important to note that these new revisions do not apply to tow trucks with U. S. Department of Transportation inspection numbers.

First, let us look at the language of the new law. It states, "A motor vehicle equipped to tow or transport another motor vehicle, hired for the purpose of towing or transporting another motor vehicle, shall have the name and address of the registered owner of the vehicle, and the name of the business or person being hired if different, printed on the side of the vehicle in letters not less than three inches in height." Although the law is clear about what information needs to appear on the side of the vehicle, it does not state whether it must be on one or both sides. Due to that silence and the lack of relevant case law, this office recommends that police officers not cite a tow vehicle that has the required information on only one side. In other words, under the current wording of the statute, having the required wording on only one side appears to be acceptable. Having the information on both sides is not necessary.

Another issue that has been raised is whether the information must be written on the actual tow vehicle or may be put on a magnet and placed on the vehicle. Looking at the quoted language above, the statute requires that the necessary information be "**printed** on the side of the vehicle . . ." (emphasis added). That suggests that a magnet may not be sufficient, because the words are then simply stuck on the side, not printed. Again, this revised law is too new to have any relevant case law yet on that subject.

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 2 of 10



Yet another question that we have received in this office is whether police may stop tow trucks that are driving without the required markings. To answer that question, we look at the second clause of the quoted language above – “hired for the purpose of towing or transporting another motor vehicle . . .” If an officer sees an unmarked tow truck driving by, not towing another vehicle, then there is not enough information to be able to articulate a reason for stopping that truck for violating this law. This law appears to require that the vehicle be “hired” at the time it is unmarked, for it to be violating the law.

To summarize, then:

- 1) markings only needed on one side,
- 2) magnet signs may not be sufficient, and
- 3) in order to stop the tow truck, need truck to be towing or attempting to tow another vehicle.

[Return to top](#)

### THE NEW DIVISION WRECKER CONTRACT

As you may have heard by now, on June 1, 2008, new Division Wrecker Contracts, involving eight companies, began. The eight companies, in alphabetical order, are: A-1 Thompson Towing, Bradley's Wrecker Service, Dellinger Wrecker Service, Inc., Eastway Wrecker Service, Inc., Hunter Auto & Wrecker Service, Larry Campbell's Towing & Recovery, Inc., Southern Star of Charlotte, and Williams Wrecker Service. There are a few changes with which you should be familiar. The first change is the tow form itself (see next page for the form).

Unlike under the previous contract, there is only one form for all the different wrecker companies, and wrecker drivers will not be expected to provide the form to officers. Instead, officers need to carry forms with them to fill out. One of the benefits of this new system is that officers will no longer have to wait for the tow truck to arrive with company-specific forms before they can begin filling them out. Instead, officers will be able to work on the forms while waiting for the tow truck to arrive, enabling officers to return to the street more quickly.

A City contract tow occurs when a representative of the City (dispatcher, officer, etc.) has contacted one of the Division Wreckers to tow a vehicle. A City contract tow requires that the officer complete a Tow / Storage Report form. If the owner or driver requests a different Division Wrecker than the one specified by the location of the tow, then the Owner's Request box is checked *in addition* to the CMPD checkbox. Again, if an owner or driver requests a tow company that is not the assigned Division Wrecker for that division but is a Division Wrecker for at least one division somewhere else in the City, the form *must* be completed, with the CMPD and Owner's Request boxes checked.

If the tow is an owner's request, not involving a tow company that is contracted with the City as a Division Wrecker, an officer *must* also complete the Tow / Storage Report form and only check the Owner's Request box. The only time when a towing company arrives on scene that an officer does not have to complete the Tow / Storage Report form (shown on the next page) is if the owner or driver called the tow company himself.

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 3 of 10



<b>CITY OF CHARLOTTE</b> Tow / Storage Report		Event (complaint)#: _____	Tow# <b>111801</b>
Requesting Agency: <input type="checkbox"/> CMPD <input type="checkbox"/> CED <input type="checkbox"/> ParkIt! <input type="checkbox"/> Owner's Request			
Date of Tow: _____ Time of Tow (use military time): _____			
Wrecker Name: _____		Wrecker Phone#: _____	
Wrecker Address: _____		Driver: _____	
<b>Hold/Seizure Information</b>			
<input type="checkbox"/> No Hold <input type="checkbox"/> Evidence Hold - Control #: _____ (per Directive 600-013, CMPD Officer must complete Property Sheet) <input type="checkbox"/> DWI Seizure Note: Seizure form ENF-176 must be forwarded to CMPD Records within 24 hours (No Property Sheet needed)			
<b>Vehicle Information</b>			
Make	Model	Body Style (4Dr., 2Dr., PU, Van, SUV, etc.)	Yr
Full VIN#	Color	Tag#	Tag Yr
			St
<b>Owner/Driver Information</b>			
Registration Owner Name/Address: _____		Driver Name/Address: _____	
Owner Contacted: <input type="checkbox"/> Via phone <input type="checkbox"/> In Person (have owner sign here to release: I, _____ <i>the owner of the above vehicle, hereby waive written notice by mail of the tow of my vehicle, pursuant to G.S. 20-219-11.</i>			
If not contacted, describe attempt: _____			
<b>Towing Information</b>			
Towed From Address (or Name of Location): _____		Reason towed: <input type="checkbox"/> Other Describe: _____	
		<input type="checkbox"/> Abandoned <input type="checkbox"/> Hit and Run <input type="checkbox"/> Accident <input type="checkbox"/> DWI Seizure	
		<input type="checkbox"/> Drugs <input type="checkbox"/> FIB Investigation <input type="checkbox"/> Illegally Parked <input type="checkbox"/> DWI (not seized)	

**Inventory of items in vehicle**

Passenger Area \_\_\_\_\_  
 Glove Box and/or Console \_\_\_\_\_  
 Trunk \_\_\_\_\_

Were received by \_\_\_\_\_ Wrecker Service on (Date) \_\_\_\_\_  
 At (Time) \_\_\_\_\_

**Owner / Driver Request for Vehicle Disposition**

I relieve Officer \_\_\_\_\_ of the  
 Charlotte-Mecklenburg Police Department of any responsibility for leaving the  
 vehicle described above and its contents parked at \_\_\_\_\_  
 I request and agree that the disabled vehicle described above be towed by  
 \_\_\_\_\_  
 to \_\_\_\_\_

Owner/Driver's Sig \_\_\_\_\_  
 Officer's Sig \_\_\_\_\_  
 Officer's Code # \_\_\_\_\_  
 Wrecker Driver's Sig \_\_\_\_\_

CMPD RECORDS

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 4 of 10



Also, please note that under the "Towing Information" part of the form, there are two check boxes relating to DWIs. If the vehicle is simply being towed away from a DWI arrest scene, the "DWI (not seized)" box should be checked. If the vehicle is being seized and towed away from the DWI arrest scene, then the "DWI seizure" box should be checked. As a reminder, per North Carolina law, an officer can only seize a vehicle for a "DWI seizure" if the driver is charged with an offense involving impaired driving *and* either his license is revoked because of a previous impaired driving offense or, at the time of the violation, the driver did not have a valid driver's license and was not covered by an automobile liability policy.

While these directions concerning DWI tows may seem very basic, the PAO has had to deal with a number of situations under the previous towing contract in which the officer completing the (old) form erroneously marked the tow as a DWI seizure. When that is done, the vehicle gets towed to a State holding lot in Cumberland County, North Carolina, and generally costs the CMPD money to retrieve. Therefore, please pay attention to the boxes on the new form, and be aware of which box you are checking.

The next major change is that the Division Wrecker districts match up with the CMPD divisions, so that there is only one company assigned to each division. The Division Wrecker assignments are as follows:

- A1 Thompson Towing – Westover Division
- Bradley's Wrecker Service – Freedom Division
- Dellinger Wrecker Service, Inc. – Providence, Steele Creek, and South Divisions
- Eastway Wrecker Service, Inc. – Central Division
- Hunter Auto and Wrecker Service – North, Metro, North Tryon and Eastway Divisions
- Larry Campbell's Towing and Recovery, Inc. – University Division
- Southern Star of Charlotte – Hickory Grove Division
- Williams Wrecker Service – Independence Division

The charges for a Division Wrecker tow have changed as well. Under the new contract, the charge for a tow is now \$85.00 (contrast that with the \$120.00 maximum allowed per tow for private trespass tows per the towing ordinance and \$70.00 per tow under the old contract), with a \$20.00 per day storage charge. These fixed costs in the Division Wrecker Contracts apply only to vehicles under 8500 pounds GVW. The weight limit for the fixed charges and the tow charges themselves, have all been raised from the last contract. Please make sure you quote the public the new information when answering questions about CMPD tows.

[Return to top](#)

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 5 of 10



### REMINDER OF WHEN VEHICLES MAY HAVE A HOLD PLACED ON THEM BY AN OFFICER

Although the hold policy for CMPD for towed vehicles is described in the Towing Directive (600-013), this article is a small reminder of when it is appropriate to place a hold on a vehicle. Officers need their supervisor's approval to do a hold. Officers may also only place a hold on a vehicle in certain, specified circumstances. For example, holds may be placed when the vehicle is being legally searched without a search warrant or CMPD is preserving the vehicle for a pending search warrant execution. Another example is if the vehicle or a part of it is evidence. And, of course, there are a number of criminal laws that allow for seizure and eventual forfeiture of the vehicle, due to its involvement in certain, specified offenses, ranging from transporting non-tax paid alcoholic beverages to transporting stolen property in excess of \$2000. (The Towing Directive has a larger, but not exhaustive, list of relevant offenses). In these cases, holds may be placed as well, with a supervisor's approval.

Bottom line – vehicle holds are not to be used as leverage on an individual. The times that holds are appropriate are very clear in the law, and the Towing Directive is a wonderful source for guidance on when those appropriate times are.

[Return to top](#)



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 6 of 10



### TOWS UNDER THE CITY DIVISION WRECKER CONTRACT COMPARED WITH TOWS UNDER THE CITY ORDINANCES

	CONTRACT	ORDINANCE
<b>Tows Covered</b>	CMPD, CED & CDOT "ordered" tows (including ones where a person requests a Division Wrecker).	Private trespass tows.
<b>Vehicles Covered</b>	All types, with fixed rates on CMPD tows only for vehicles with a GVW of under 8500 lbs.	Only vehicles of 9000 lbs. GVW or less.
<b>Allowed Charges</b>	<ol style="list-style-type: none"> <li>1. \$85.00/tow of vehicle weighing less than 8500 lbs.</li> <li>2. \$20.00/day storage for vehicles</li> <li>3. \$10.00/hour after the 1<sup>st</sup> hour for tow trucks to wait.</li> <li>4. \$30.00 to winch vehicle into position for tow.</li> </ol>	<p>Provided that the proper signage is in place per Sec. 6-563:</p> <ol style="list-style-type: none"> <li>1. Up to \$120.00/ tow for vehicles 9000 lbs. GVW or less.</li> <li>2. \$15.00/day for storage after the first 24 hours</li> </ol> <p>No other charges allowed.</p>
<b>Start of Tow</b>	Contact made with vehicle that makes it physically impossible to be driven away.	Movement of vehicle by tow truck, from the space in which it was sitting.
<b>Time Vehicles Can be Retrieved</b>	6:00 a.m. to midnight, 7 days per week.	7:00 a.m. to 7:00 p.m., 7 days per week.
<b>Tow Companies Covered</b>	<ul style="list-style-type: none"> <li>• A1 Thompson Towing</li> <li>• Bradley's Wrecker Service</li> <li>• Dellinger Wrecker Service, Inc.</li> <li>• Eastway Wrecker Service, Inc.</li> <li>• Hunter Auto and Wrecker Service</li> <li>• Larry Campbell's Towing and Recovery, Inc.</li> <li>• Southern Star of Charlotte</li> <li>• Williams Wrecker Service</li> </ul>	All tow companies towing from a point inside the City of Charlotte.

[Return to top](#)

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 7 of 10



### BRIEF:

#### UNITED STATES SUPREME COURT:

##### **Sixth Amendment Right to Counsel / Attachment / Initial Appearance Before a Magistrate:**

*Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (2008).

**Facts:** After police conducted a background check, Walter Rothgery was arrested for being a felon in possession of a firearm. (It was later determined that the data the police reviewed was erroneous.) Pursuant to state law, he was promptly brought before a magistrate and advised of the charge. Rothgery requested counsel, but was advised by the magistrate that the appointment of counsel would delay the setting of bail. Rothgery then waived his right to have counsel present and proceeded with the hearing. The magistrate, after reviewing the affidavit submitted by the arresting officer, found that there was probable cause for the arrest and set bail and committed him to jail. Rothgery quickly posted bail and was released. A few months later, Rothgery was indicted by the grand jury and was re-arrested and his bond was increased to \$15,000.00. Unable to make bond, he remained in jail until a lawyer was assigned to represent him. His lawyer obtained a reduction in his bond and a dismissal of the charge, after establishing that Rothgery was never convicted of a felony.

Rothgery sued the county, claiming that the county's failure to provide him with a lawyer either at or within a reasonable time after the initial hearing violated his Sixth Amendment right to counsel. According to Rothgery, the county had an unwritten policy denying indigent defendants appointed counsel who were released on bond until there was an entry of the information or indictment. The county's motion for summary judgment against Rothgery was granted and upheld by the Fifth Circuit which agreed that the Sixth Amendment's right to counsel did not attach at the initial appearance before the magistrate. The Supreme Court reversed the Fifth Circuit and held the Sixth Amendment right attached at the first hearing before the magistrate.

**Issue:** What type of judicial proceeding triggers the attachment of the Sixth Amendment right to counsel?

**Rule:** A "criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings and triggers attachment of the Sixth Amendment right to counsel."

**Discussion:** The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." At issue in this case is determining when a criminal prosecution begins. The Court concluded that it attached when the person is initially brought before the magistrate and restrictions are placed on his liberty, such as setting bail.

"The Sixth Amendment right of the 'accused' to assistance of counsel in all criminal prosecutions is limited by its terms: it does not attach until a prosecution is commenced. We have, for purposes of the right to counsel, pegged commencement to the initiation of adversary judicial criminal proceedings -- whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. The rule is not 'mere formalism,' but a recognition of the point at which 'the government has committed

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 8 of 10



itself to prosecute,' the adverse positions of government and defendant have solidified, and the accused finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law."

### **How does this ruling affect CMPD officers?**

For now, officers should not attempt to elicit information about the crime after the defendant has made an appearance before the magistrate. We are working with the Sheriff, the Magistrate's Office, and the District Attorney to ensure our procedures are in compliance with this case. We will keep you posted on any developments.

Officers should be mindful of when a person is arrested for a major felony. In circumstances where officers desire to elicit information about the crime, any questioning will need to occur before the person appears before the magistrate.

[Return to top](#)

### **RECENT AMENDMENT TO N.C.G.S. § 15A-831 (RESPONSIBILITIES OF LAW ENFORCEMENT AGENCY)**

Effective July 1, 2008, the CMPD is required to provide an additional informational sheet to victims of domestic violence, per an amendment to G.S. § 15A-831. As with the previous information required to be distributed to such victims, this information must be given "as soon as practicable" but no later than seventy-two hours after the victim has been identified. Also, per the amendment, the domestic violence victims covered are limited to those who had a "personal relationship" with the accused. That "personal relationship" is defined in G.S. § 50B-1(b) and covers the following situations:

1. Are current or former spouses;
2. Are persons of opposite sex who live together or have lived together;
3. Are related as parents and children, including someone acting in place of a parent to a minor child, or as grandparents and grandchildren;
4. Have a child in common;
5. Are current or former household members (applies to same sex); or
6. Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship (a dating relationship is one in which the parties are romantically involved over time and on a continuous basis; a casual friendship in a business or social context is not a dating relationship).

The informational sheet is the form developed by the Administrative Office of the Courts, entitled "Domestic Violence Information Sheet." A copy of this form can be found on the Police Attorney's portal. Officers should make sufficient copies of the form to hand out until the Domestic Violence Information Sheet can be incorporated into the CMPD handout.

[Return to top](#)



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 9 of 10



### PENDING BILLS BEFORE THE GENERAL ASSEMBLY

The following bills are pending before the North Carolina legislature. The below paragraphs summarize the bills as they exist today. There is no guarantee that any of these bills will become law or if they do, be in their current form. **Note: a bill listed is not law until passed by the House and the Senate, ratified, and, if required, signed by the Governor.**

#### **The Act to Change Format of Drivers' Licenses for Persons Under 21:**

<http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=h2487>

Changes the format of a driver's license or special identification card being issued to a person less than twenty-one years of age from a horizontal format to a vertical format to make recognition of underage persons easier for clerks dealing in restricted age sales of products such as alcoholic beverages and tobacco products as recommended by the Child Fatality Task Force.

#### **The NICS Reporting/Restoration Act:**

<http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=s2081&submitButton=Go>

Amends G.S. § 122C-54, requiring that clerks of court where the determination was made, report to or update NICS when an individual is involuntarily committed by judicial determination, or when an individual is found not guilty by reason of insanity or found mentally incompetent to stand trial. Enacts new G.S. § 122C-54.1, establishing procedures for an individual, over the age of 18, to remove the mental commitment bar to purchase, possess, or transfer firearms.

#### **An Act to Increase Maximum Speed for Mopeds:**

<http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=h2589>

Eliminates the speed limit for mopeds, requires a driver's license for moped operators under eighteen years of age operating mopeds with a motor that has a piston displacement of fifty cubic centimeters to one hundred fifty cubic centimeters, and allows individuals eighteen years of age and older to operate mopeds without a driver's license.

#### **The Act to Increase Reward Amount for Crime Information:**

<http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=h2286&submitButton=Go>

Increases the reward the Governor may offer, from \$10,000 to \$100,000, for information leading to the arrest and conviction of a person who has committed a felony or "infamous crime" in North Carolina.

#### **The Jessica's Law/GPS Monitoring Act:**

<http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2007&BillID=S2063&submitButton=Go>

Imposes lifetime satellite-based monitoring on offenders who have taken indecent liberties with children.

# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

Summer 2008

Volume 27, Issue 2

Page 10 of 10



### **The Jessica Lunsford Act for N.C.:**

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=H933>

Is a 25-section bill aimed at sex offenses committed on juveniles. The bill provides that certain criminal offenses of rape or first-degree sexual offense committed against a child are punishable by either life imprisonment without parole or a mandatory active sentence of twenty-five years and lifetime satellite-based monitoring. The criminal offense of lewd or lascivious molestation of a child would be created to be punishable by life imprisonment without parole or a mandatory active sentence of twenty-five years and lifetime satellite-based monitoring. Criminal penalties for sexual exploitation of a minor and promoting prostitution of a minor are increased. Sex offender registration requirements are amended to be more stringent. A new criminal offense is created making it unlawful for a sex offender to be on certain premises including those where a reasonable person would know children regularly congregate, with exceptions.

### **The North Carolina Street Gang Prevention Act:**

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=h274&submitButton=Go>

Proposes legislation intended to eradicate criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs. "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity. "Pattern of criminal gang activity" means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the stated offenses. A person who is convicted of an offense that is committed for the benefit of, at the direction of, or in association with, any criminal street gang, is guilty of an offense that is one class higher than the offense committed. A Class A1 misdemeanor shall be enhanced to a Class I felony. Property used by a gang to commit criminal offenses or derived from criminal offenses is subject to forfeiture.

### **The Act to Regulate Dangerous Animals:**

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=s1788&submitButton=Go>

Provides for the protection of the public against the health and safety risks posed by inherently dangerous wild animals by regulating, restricting, or prohibiting possession or harboring of these animals. The Act also protects the welfare of inherently dangerous wild animals. "Inherently dangerous wild animals" includes: wolves, lions, tigers, cheetahs, jaguars, cougars, leopards, hyena, and bears. Qualified USDA license holders or wildlife sanctuaries are exempted, as are others listed in G.S. § 153A-131.1(i). The Act provides enforcement authority by Animal Control and penalties for violations in localities that enact ordinances to regulate and/or restrict, rather than a prohibition.

[Return to top](#)