

Model Policy: Vehicle Inventory

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PURPOSE

This policy outlines proper procedure for an inventory.

- Step 1: Lawfully impound the vehicle; and
- Step 2: Search it in the manner specified.

The reasons to conduct an inventory:¹

- Safeguard the vehicle and its contents when police have determined it must be impounded;
- Protect the police and tow company from false claims about lost or stolen property; and
- Protect the public and police from dangerous items left in the vehicle.

An inventory is not undertaken to gather evidence.² While officers sometimes find evidence of crime during an inventory, it is not the goal of the procedure. If officers see evidence during an inventory, they should seize and store it properly, and note their findings on the inventory form and in a separate incident report.³

STEP 1: IMPOUNDMENT

Impoundment happens when officers at the scene decide the vehicle must be towed. When the owner or someone in lawful control of the vehicle makes the decision, police should not conduct an inventory. For example, the owner decides to tow her disabled vehicle and notifies AAA. On the other hand, if officers authorize the tow of a vehicle that trespassed on private property (266, § 121A), they must conduct an inventory. The issue is who makes the final *decision* to tow, not who selects or pays the tow company.⁴

Impoundment does not occur unless police are present. For example, the department is notified about a private tow from a posted area (266, § 120D), but officers are not dispatched.

¹ *South Dakota v. Opperman*, 428 U.S. 364 (1976).

² *Comm. v. Baptiste*, 65 Mass. App. Ct. 511 (2006); *Comm. v. Alvarado*, 420 Mass. 542 (1995) (use of a drug sniffing K-9 was totally inconsistent with the purpose of an inventory; so was dismantling a coffee maker found in the backseat area).

³ *Comm. v. Ubilez*, 88 Mass. App. Ct. 814 (2016); *Comm. v. Lopez-Rosario*, 2017 WL 1423593 (Appeals Court). Compare *Comm. v. Ortiz*, 88 Mass. App. Ct. 573 (2015).

⁴ *Comm. v. Daley*, 423 Mass. 747 (1996). *United States v. Dunn*, 928 F.3d 688 (8th Cir. 2019).

Impoundment must not occur when police have a reasonable alternative to towing. A reasonable alternative exists if either: (1) an *alternative operator* is available to legally drive the vehicle from the scene; or (2) the vehicle can be left *lawfully parked* at the location where police encountered it. Whether a reasonable alternative exists depends on the circumstances.⁵

- **An alternative operator must be:**

- 1) Present at the scene *before* officers notify the tow company;⁶ and
- 2) In possession of a valid driver's license; and
- 3) Approved by the owner, or someone clearly authorized by the owner, to take custody of the vehicle.⁷

Officers do not have to wait for an alternative operator once the towing process is initiated.

Operators without their license in possession are disqualified, and no further investigation may take place into their license status.⁸ On the other hand, operators who provide a license must have their status checked through CJIS.

Finally, operators must be authorized by the owner, or by someone clearly connected with the owner, in order to take custody of the vehicle.

- **Lawfully parked** means that the vehicle is secure⁹ and legally parked in a public or private location. Secure means that the vehicle is locked with the windows closed.

If the vehicle is lawfully parked following a *police stop*, and there is no alternative operator, the vehicle should still be impounded and towed if officers determine there is a realistic risk of theft or vandalism if the vehicle remains at that location.¹⁰

On the other hand, if the operator lawfully parked *before* police contact, then officers may *not* impound on the basis that leaving it parked risks theft or vandalism; or simply because they cannot contact the vehicle owner.¹¹

Officers must determine whether an alternative operator is available or whether the vehicle may remain lawfully parked — and they must inform the original driver if one of these options is possible. It is the duty of the officers on scene to inform the original driver if there is

⁵ *Comm. v. Caceres*, 413 Mass. 749 (1992); *Comm. v. Eddington*, 459 Mass. 102 (2011).

⁶ *Comm. v. Ellerbe*, 430 Mass. 769 (2000); *Comm. v. Delvalle*, 2016 WL 4426380 (Appeals Court) (no obligation to allow arriving friends to take a vehicle that was already in the process of being towed).

⁷ *Comm. v. Nicholas*, 93 Mass. App. Ct. 1123 (2018) (police have right to be concerned about the owner's accusation of misappropriation if they turn the vehicle over to someone without a connection to the owner).

⁸ *Comm. v. Bettencourt*, 447 Mass. 631 (2006).

⁹ *Comm. v. Lugg*, 2014 WL 6847704 (Appeals Court) (open windows needed to be secured by officer in order for vehicle to be properly left on the side of the street at a parking meter).

¹⁰ *Comm. v. Eddington*, 459 Mass. 102 (2011).

¹¹ *Comm. v. Oliveira*, 474 Mass. 10 (2016).

a legal option to having the vehicle impounded and towed. The driver and passengers are not responsible for assessing the situation.¹²

Even if an alternative operator is available or the vehicle is lawfully parked, it still must be impounded when the driver is arrested for operating under the influence (OUI) of alcohol or drugs.^{13, 14}

Absent an alternative operator or lawful parking situation, officers are authorized to impound a vehicle that:

- **Is abandoned.** 90, § 22C allows officers to take possession of a vehicle abandoned for more than 72 hours on public or private property;
- **Is trespassing.** 266, § 121A allows officers to tow a vehicle that was left at another person’s property without permission, whether or not the property was posted “no trespassing”;
- **Is impeding traffic and the operator cannot immediately move the vehicle;**
- **Is illegally parked;**¹⁵
- **Is disabled and cannot be operated;**¹⁶
- **Has a safety defect that would cause it to fail inspection** (e.g., malfunctioning lights, directional signals, muffler, etc.);¹⁷
- **May not be legally driven** (e.g., unregistered, uninsured, attached license plate);¹⁸
- **Was operated by a driver who lacks the legal authority to drive** (e.g., unlicensed, learner’s permit violation, violation of license restriction, suspended license or right to operate, etc.); or

¹² *Comm. v. Goncalves-Mendez*, 484 Mass. 80 (2020) (police had the legal authority to allow the defendant’s passenger to drive his vehicle from the scene after he was arrested for suspended operation; it was not the responsibility of the defendant or passenger to independently express their preference; police should have specifically asked before they conducted an inventory and tow).

¹³ Including OUI alcohol in this blanket prohibition is justified by “Melanie’s Law,” which requires that any vehicle be impounded for 12 hours if the arrested motorist refuses the breathalyzer (BT) or blood test. 90, § 24(f)(iii). Since officers do not know, at the time of arrest, whether the defendant will refuse a test, they must always tow the vehicle pending that post-arrest decision, even if it is lawfully parked or there is someone at the scene who would normally qualify as a competent operator.

¹⁴ Including OUI drugs in this blanket prohibition is justified by *Comm. v. Kry*, 2017 WL 35535 (Appeals Court) (Northampton police mandatory vehicle tow policy for all OUI arrestees, including drug cases, justified inventory and discovery of a sawed-off shotgun in the defendant’s car).

¹⁵ *Comm. v. Tisserand*, 5 Mass. App. Ct. 383 (1977) (double parking); *Comm. v. Wallace*, 70 Mass. App. Ct. 757 (2007) (handicap parking); *United States v. Exume*, 2013 WL 3494427 (U.S. District Court) (tow zone violation). 90, § 20A (municipal police may tow or “boot” a vehicle with five unpaid parking tickets).

¹⁶ *Comm. v. Mamacos*, 409 Mass. 635 (1991).

¹⁷ 540 CMR 4.07. *Comm. v. Elwell*, 2015 WL 4633768 (Appeals Court).

¹⁸ *Comm. v. Daley*, 423 Mass. 747 (1996); *Comm. v. Ubilez*, 88 Mass. App. Ct. 814 (2016).

- Was operated by a driver who is **under arrest for a crime other than OUI** (e.g., outstanding warrant, domestic violence assault, drug distribution, shoplifting, etc.).¹⁹

Rental vehicle protocol. Upon encountering an unauthorized operator in a rental car, officers are authorized to notify the rental company and impound and tow the vehicle at the company's request *only* if:

- 1) The rental agreement is expired; or
- 2) The unauthorized operator does not have a valid license; or
- 3) The driver is under arrest and the authorized operator is not at the scene to retrieve the vehicle;²⁰ or
- 4) Officers are unable, through contact with an authorized operator, to determine whether he or she gave permission to the current driver.

STEP 2: PROCEDURE

The inventory must occur at the scene before the vehicle is towed or immediately after the vehicle arrives at the tow lot.²¹

Standard Procedure

Officers must examine, in order:²²

- 1) **The exterior of the vehicle for signs of damage;**
- 2) **The passenger compartment, including the glove box;**
- 3) **The trunk; and**
- 4) **Any other place in the vehicle or its attachments/trailer where valuables or other personal property may be kept** (including "hidden compartments").²³

In those areas, officers must examine the contents of all unlocked containers (including containers inside other containers) that might hold personal property.²⁴

¹⁹ *Comm. v. Sanchez*, 40 Mass. App. Ct. 411 (1996).

²⁰ *Comm. v. Campbell*, 475 Mass. 611 (2016). *Byrd v. United States*, 138 S. Ct. 1518 (2018). *United States v. Lyle*, 919 F.3d 716 (2019).

²¹ *Comm. v. Sanchez*, 40 Mass. App. Ct. 411 (1996).

²² *Comm. v. Garcia*, 409 Mass. 675 (1991).

²³ *Comm. v. Mitchell*, 2016 WL 1391097 (Appeals Court).

²⁴ *Comm. v. Allen*, 76 Mass. App. Ct. 21 (2009). *Comm. v. Valle*, 2013 WL 6725763 (Appeals Court) (by policy, the inventory extended to all storage areas and compartments; this included a jacket left on the back seat; once the officer lifted the jacket and determined it contained a heavy object, that object had to be inventoried as well; it turned out to be an illegal firearm); *Michigan v. Thomas*, 458 U.S. 259 (1982) (searching vehicle air vents was not within the scope of a lawful inventory; air vents are not places where people normally put

Officers must also open locked containers if they obtain the key or combination from the driver and/or vehicle owner.²⁵ Officers should open a locked container by force only in an emergency. Absent a key or combination, or an emergency, officers must obtain a search warrant to open a locked container unless another legal rule applies (e.g., motor vehicle exception).²⁶

Officers have discretion to turn over items from an impounded vehicle to an occupant or a third party only after they complete the inventory.²⁷

The inventory must be documented on the department-issued form.²⁸

Alternative Procedure

When multiple vehicles are towed at events or during snow emergencies, the standard inventory procedure may be unworkable. In those situations, officers may fulfill their responsibility by looking into the passenger compartment from outside and noting any obviously expensive items in a supplemental report listing the date, time, and nature of the operation; the location; the tow company; and identifying information for each of the vehicles impounded and towed.

their personal effects). *Comm. v. Lara*, 39 Mass. App. Ct. 546 (1995) (prying the cover off the dashboard inconsistent with inventory); *Comm. v. Muckle*, 61 Mass. App. Ct. 678 (2004).

²⁵ *Comm. v. DiFalco*, 73 Mass. App. Ct. 401 (2009).

²⁶ *Comm. v. Rosario-Santiago*, 96 Mass. App. Ct. 166 (2019) (officer began an inventory after arresting the defendant driver for a suspended license; the inventory morphed into a warrantless motor vehicle exception search when the officer found evidence of a hidden compartment). *Comm. v. Baptiste*, 65 Mass. App. Ct. 511 (2006) (what started as an inventory turned into a warrantless motor vehicle exception search for drug evidence). *Comm. v. Moses*, 408 Mass. 136 (1990) (motor vehicle exception covers the search of locked containers that may hold evidence related to the officer's probable cause).

²⁷ *Comm. v. Nicoleau*, 90 Mass. App. Ct. 518 (2016).

²⁸ *Comm. v. Torres*, 85 Mass. App. Ct. 51 (2014); *Comm. v. Brinson*, 440 Mass. 609 (2004) (provide prosecutor with policy if inventory challenged in court).