



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-01

Distribution: All Sworn Personnel  
Date: 01/21/2006  
Subject: Police Response to Suspicious Substance  
Topic: WMD Calls

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

In the last 4 weeks Carlsbad Police responded to two separate calls regarding a man spraying an "unknown substance" in public locations. The first incident was inside a NCTD bus at the Plaza Camino Real Transit Station. The second was at the Souplantation restaurant where the suspect was seen spraying an unknown substance on the food in the salad bar. Unfortunately, samples of the substances were not collected from either of these events and have not been identified.

There have been no unusual increases of reported illnesses to our area's health care facilities. This leads us to believe that the unknown substance the suspect(s) used is either inert, non-poisonous or of insufficient potency to infect others.

Fire Department personnel have a different mission than Law Enforcement personnel and may not identify or appreciate LE concerns- i.e.: evidence protection and collection. Officers should remain cognizant of their safety and the safety of others.

If you are dispatched to this type of incident it is recommended that you apply the training you have received in the past. First: Protect Yourself. Second: Protect Your Fellow Responders. Accurately, **Locate** the incident and relay this information to CBPD Dispatch. **Isolate** the scene. If possible, **Identify** the suspect(s), witnesses and civilians who are present during the event. Have our Dispatch contact San Diego County Hazmat via the Sheriff's Department Dispatch (Station M). A Hazmat Team will respond with the proper protective equipment and recover samples of the substance for testing. The "Environmental Health Unit" of the Hazmat Team has been briefed on our previous incidents and would very much like to obtain a sample of the substance.

If you contact the suspect engaged in the dispersal of the unknown substance, it is suggested that you use "Universal Precautions." Detain and Isolate the suspect on scene. Have Hazmat respond to advise on the best course of action to obtain evidence and decontaminate the suspect, if necessary.

Steve R. Sutt, Police Sergeant



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-02

Distribution: All Sworn Personnel

Date: February 7, 2006

Subject: Vehicle Storage

Topic:

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

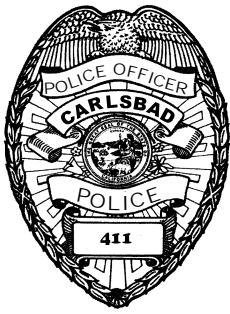
Recently the Ninth Circuit Court made a ruling (*Miranda v. City of Cornelius*) concerning the storage of vehicles when the driver is issued a citation for 12500 (a) VC. In this case the husband was teaching his unlicensed wife to drive the family car. The husband was licensed and the vehicle was insured. At the time of the enforcement contact the car was parked in the driveway of their home. The vehicle was stored.

Generally 22651 (p) VC has been discounted and the decision to tow depends on whether vehicles are creating a hazard, impeding traffic, threatening public safety or subject to vandalism or theft. Under the Fourth Amendment this is known as the "community caretaking doctrine" which allows the police to impound the vehicle where necessary to ensure that the location or operation of the vehicle does not jeopardize the public safety.

The key to this issue is being reasonable. If the vehicle is legally parked or there is a licensed driver present, storage of the vehicle is probably not reasonable. Officers are under no obligation to move the car to a safe location if it is illegally parked.

Officers must articulate in the storage report the reason for storing a car that might appear on the face not to fall within the "community caretaking doctrine." An example of this might be after citing an unlicensed driver they are seen a few minutes later driving the same vehicle.

Mike Shipley, Police Captain  
Field Operations Commander



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-03

Distribution: All Sworn Personnel  
Date: February 23, 2006  
Subject: Target Responsibility for Alcohol Connected Emergencies (TRACE)  
Topic:

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

Target Responsibility for Alcohol Connected Emergencies, or TRACE, is an investigative program run by the Department of Alcoholic Beverage Control (ABC) that every officer should be familiar with. TRACE investigators should be notified when any minor (person under age 21) suffers a serious injury and alcohol is involved. TRACE investigators will conduct a parallel investigation to identify the source of the alcohol, in essence, to identify who supplied the alcohol to the minor. Once the source of the alcohol is identified, ABC will take criminal and / or administrative action against the individual or licensed alcohol establishment.

### TRACE HISTORY

TRACE began in April 2004 when Lynne Goodwin lost her daughter Casey in a fatal DUI collision in San Luis Obispo County. Casey was hit head-on by a 19 year-old, who was intoxicated and crossed the center of the roadway into Casey's lane.

After grieving the loss of Casey, Lynn contacted Attorney General Bill Lockyer and asked a very important question, "What is the protocol to investigate the source of the alcohol furnished to the 19 year-old driver that killed Casey?" Because there was no formal protocol in place, TRACE was born.

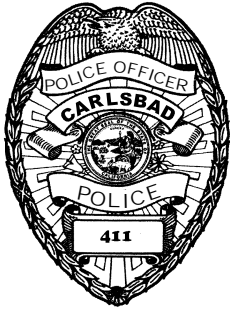
To date, TRACE has been involved in over 94 statewide investigations that have resulted in 18 ABC administrative accusations being filed and 22 criminal arrests. TRACE has investigated the source of alcohol that led to the deaths of 63 minors and 98 other serious injuries to minors.

### PROCESS

TRACE should be put into action as a result of any incident where a minor and alcohol results in any serious injury. This incident could be a traffic collision, rape, assault, report of injury, medical emergency, alcohol poisoning, etc. Serious injury could be any traumatic condition that requires immediate medical attention. If you are unsure if the injury is serious enough, TRACE would rather hear from you than not.

### CONTACT

TRACE is available 24-hours a day, 7 days a week at 562-239-5949 (Southern California). The local ABC contact is ABC Investigator Matt Hydar in the San Diego office at 619-525-4304.



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-04

Distribution: All Sworn Personnel  
Date: March 29, 2006  
Subject: Qualified Immunity  
Topic: Kimberly Kennedy v. City of Ridgefield

A handwritten signature in blue ink that reads "Tom Zoll".

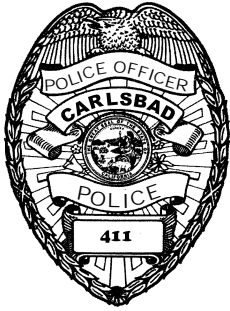
Tom Zoll, Chief of Police

Kimberly Kennedy claimed, neighbor Michael Burns (thirteen years old), molested her nine year old daughter. Ms. Kennedy warned Officer Noel Shields that Michael Burns had violent tendencies, and Shields assured her that she would be notified before the police contacted Burns. Shields later told Kennedy that he had informed Michael Burns and his mother of Kennedy's accusations before notifying her. Ms. Kennedy became upset and was concerned about her family's safety. Shields told Ms. Kennedy that the police would provide additional patrol in the neighborhood. Approximately eight hours after Michael Burns learned of the molestation allegations he broke into the Kennedy's home and shot both Kimberly and her husband, Jay, while they slept. Jay Kennedy died.

Ms. Kennedy filed suit pursuant to 42 U.S.C. § 1983 against the City of Ridgefield and Police Officer Noel Shields. Shields argued that his conduct did not violate Plaintiff's clearly established constitutional rights. The District Court ruled that Shields was not entitled to qualified immunity and the Ninth Circuit Court of Appeals affirmed.

Qualified immunity requires a two-prong analysis. First, the question is whether the officer's conduct violated a constitutional right. If so, then the court must determine whether, at the time of the violation, was the constitutional right "clearly established?" If so, then a denial of qualified immunity is appropriate. Here, Shields went to the Burns' home and informed Ms. Burns and Michael Burns of Kennedy's accusations. Shields created a risk of danger to Kennedy that would not have otherwise existed. This danger was that Burns would have knowledge of the claims before the Kennedy's took necessary action to protect themselves against Michael Burns' violent tendencies. The Court held that it was clearly established at the time that state officials could be liable where they placed an individual in danger that he/she would not have otherwise faced. Thus, Officer Shields violated Kennedy's clearly established constitutional right.

PAUL G. EDMONSON  
Deputy City Attorney



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-05

Distribution: All Sworn Personnel  
Date: April 26, 2006  
Subject: Sixth Amendment Right  
Topic: People v. Viray

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Tom Zoll, Chief of Police

A new decision by the California Sixth District Court of Appeal has held that the filing of a felony complaint by a prosecutor triggered the defendant's Sixth Amendment right to counsel. (People v. Viray (2005) 134 Cal.App.4<sup>th</sup> 1186.)

A deputy district attorney signed a felony complaint charging Viray with the financial abuse of an elder. The matter was set for arraignment approximately three weeks later. The prosecutor arranged to meet with Viray before Viray's arraignment. At the meeting, the prosecutor and an investigator questioned Viray at length without any type of Miranda or Sixth Amendment advisement or waiver.

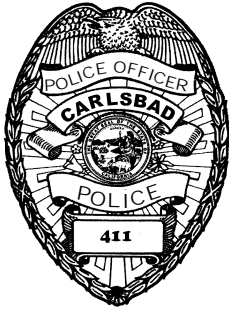
The appellate court held that Viray's right to counsel attached when the prosecutor filed the felony complaint and the subsequent questioning of Viray violated that right.

The California Supreme Court has decided that it will not review the case. Therefore, law enforcement officers throughout California should treat Viray as settled California law.

The Sixth Amendment right to counsel does not attach if, instead of seeking a criminal complaint, officers apply for a pre-complaint arrest warrant, commonly known as a "Ramey warrant." The form for a Ramey warrant is found in Penal Code § 817, subdivision (f). An arrest under a Ramey warrant does not trigger a defendant's Sixth Amendment right to counsel.

ROBERT ANDERSON  
Chief Assistant Attorney General

For BILL LOCKYER  
Attorney General



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-06

Distribution: All Sworn Personnel  
Date: April 26, 2006  
Subject: American Red Cross Guidelines  
During Disasters

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

The American Red Cross is mandated by Congress to be the non-government organization to respond to mass care situations resulting from natural and man made or technological disasters in the United States. They also respond to humanitarian situations to relieve human suffering from disasters, famine and disease when no other means of relief or government assistance is available or being given.

Guidelines for requesting San Diego / Imperial Counties Chapter (SDICC) of the American Red Cross **24-hour dispatch 858-309-1300:**

- 1) When people are evacuated and there is a potential sheltering.
- 2) When people are to be evacuated for more than 3-4 hours (example SWAT / Tactical Response Team or they are to be displaced from their homes by disaster or decree) and need a Temporary Evacuation / Collection Point (TEP) or they need a full Sheltering Operations for longer-term situations.
- 3) When people are be evacuated for a short time and sheltering is not needed, but there are human issues (children, elderly, disabled) that will need services (hydration, food, clothing, nursing, mental health counseling) while at an evacuation point.
- 4) When Police, Fire or emergency workers are on scene and unable to leave and the situation is expected to last for more than 4 hours. Canteen Hydration will be provided for them if no services are otherwise available and under extended emergency operations, we also provide feeding.
- 5) When there is a question of whether the need exists to have Red Cross assist in any given situation for its services.

SDICC maintains volunteers, staff, facilities, mobile resources and supplies to respond to evacuation needs of the county. They are authorized locally under Annex G of the county response plan to be the primary mass care provider. SDICC maintains a 24/7 Disaster Action

Teams (DAT) that is capable of responding to incidents of single family home situation to full mass evacuation sheltering events. Two on call DAT's are on reserve at all times, one for the North County and one for the South County areas. They also maintain a reserve call out list of over 700 volunteers to assist as the situation requires.

The American Red Cross provides basic emergency services based on the disaster needs of the people and emergency workers affected. Typically these include:

- 1) **Initial Response:** Sheltering, Feeding, emergency medicine replacement, physical health issues and mental health counseling.
- 2) **Individual Emergency Assistance:** To help people deal with the immediate needs (initial few days they are being displaced) of a disaster situation, we assess their need for emergency clothing, shoes, food, medical supplies. Casework begins at this point to return them to permanent housing.
- 3) **Recovery Assistance:** In larger scale disasters working with other agencies to help them plan for recovery from the disaster. This can include direct assistance and /or referral assistance to other agencies (government and non-government) or community groups that have relief operation capabilities to supply needs beyond what the Red Cross can provide.

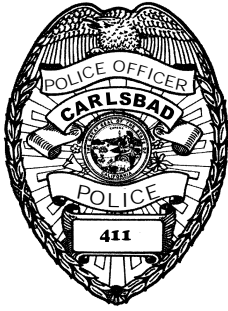
**All Red Cross Assistance is provided Free** to clients and emergency personnel. This is made possible by the generous donations of the American people and community to the Red Cross Disaster Relief Fund for San Diego / Imperial County.

To insure the donated dollar is properly utilized, we evaluate the cause of the disaster situation. Disasters of human error or man-made could have limited liability implications and the Red Cross would refer the client to the property owner or other responsible party.

If the need is a result of a natural disaster (fire, storm flood, earthquake etc.) all services are available based on the damage assessment inspection of the home or apartment involved in the disaster. In limited liability situations where a commercial entity is involved and responsibility for property damage or displacement is identified, we work with the responsible entity to help get the needs of the clients displaced by the situation met. The American Red Cross will provide for the Basic Emergency Assistance (sheltering, feeding etc.) initially as needed for humanitarian considerations but longer term assistance needs will be referred to the responsible entity.

The Red Cross does not respond to home maintenance issues (water pipe breaks, no electricity etc), car accidents (unless it is a commercial transportation issue – bus, train, planes) or water main breaks in the city (government responsibility issue). There is always the potential for a humanitarian reason to intervene with an exception and this can be distinguished by the Duty Officer on call if there is a question.

They are there to handle the consequence (people) issues associated with an emergency response. They are your partners in this situation so you can handle the life, property law enforcement issues of your community.



# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-07

Distribution: All Sworn Personnel  
Date: July 13, 2006  
Subject: California Driver License (DL)  
Residency Requirements  
Topic: CHP Bulletin No. 183

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

The California Highway Patrol's Commercial Vehicle Section (CVS) has received numerous inquiries from allied agency personnel regarding DL requirements for residents of other countries. A majority of the inquiries concern undocumented aliens from Mexico.

Pursuant to Section 12500(a) of the Vehicle Code (VC), any person operating a motor vehicle on a highway in this state is required to possess a California DL unless "expressly exempted under this code." Section 12502 VC exempts a nonresident from the requirement of possessing a California DL provided the driver has in his or her immediate possession a valid DL issued by the foreign jurisdiction (i.e. state, province, country) in which he or she lives.

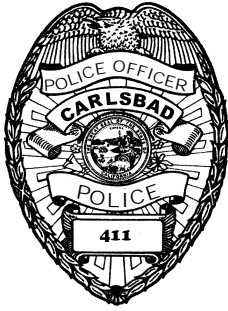
Although Section 516 VC provides a definition of resident, the definition of *residency* contained in Section 12505(a)(1) VC is the applicable definition for DL purposes. Section 12505(a)(1) reads:

For purposes of this division only and notwithstanding Section 516, residency shall be determined as a person's state of domicile. 'State of domicile' means the state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent." (Emphasis added)

Additionally, Section 12505(e) VC also allows a nonresident to operate a noncommercial motor vehicle on California highways provided the person possesses a valid DL issued by a foreign jurisdiction (country) having DL standards deemed equivalent to standards adopted by the California Department of Motor Vehicles (DMV). During the past several years, the legislature has reviewed legislation which, if enacted, would have allowed undocumented aliens to obtain a California DL. During legislative hearings, DMV personnel have consistently testified DLs issued by each state of Mexico are recognized in California. Furthermore, DMV has not determined if any other country has standards which are not equivalent to California's standards.

What this means to you: If a resident of another country has in his or her immediate possession a valid license from their home country they can legally drive a motor vehicle in California. If the driver is a California resident and possess a license from another country they are required to obtain a California DL within 10 days of establishing residency in the state, per 12505 (c) VC.





# CARLSBAD POLICE DEPARTMENT

## Department Training Bulletin

#2006-08

Distribution: All Sworn Personnel

Date: October 20, 2006

Subject: Freedom of Expression Issues

Topic: Petitioners, Canvassers, and Campaigners  
At Special Events

A handwritten signature in blue ink that reads "Tom Zoll".

Tom Zoll, Chief of Police

In response to recent incidents the following guidance is being provided regarding free speech issues at Special Events:

The issue is a balance of two competing freedoms of speech - the speech of the event holder versus the speech of the individual. These competing speech issues have been before the Courts several times, with the Courts being very reluctant to abridge an individual's right to free speech.

When a Special Event is unfenced, open to the public without charge, and on public property, we cannot stop someone from coming into the venue simply because they are there to express their views. This applies to petitioners, canvassers, and campaigners, etc. The petitioners/campaigners have a right to be there and we must be very careful when dealing with this situation. If the petitioners/campaigners are circulating about the event, there is very little we can do. A private lessee of a public outdoor area owned by the City may be able to impose reasonable restrictions on time, place, or manner of protected speech.

In the Special Event permitting process, we suggest the promoter designate a specific area (that may also include table and chairs) for "freedom of speech" activities by individual and groups. The area cannot be so far removed from the general public that the petitioners/campaigners will not be seen or heard. The "Freedom of Speech" area should be indicated on the site plan. If the promoter so designates such an area, we can suggest the petitioners/campaigners move there. If the petitioners/campaigners have set up a table or display outside a designate area, we can suggest they move, but once again, we cannot force them. If they are blocking a sidewalk or inhibiting the flow of pedestrian traffic, we can, together with the Fire Marshall, determine if it is so egregious we can require them to move. However, we cannot act unless what they are doing rises to a high level of jeopardy to public safety. We must be careful to act only on their conduct not on the content of their speech.

Before contacting or confronting any petitioner/campaigner, contact the Officer in Charge of the event. Document all law enforcement contacts/actions with detailed notes, reports and if possible photographs or video. The City Attorney's office will need to be briefed on all cases of this nature due to the potential for civil liability.