

APPLE VALLEY UNIFIED SCHOOL DISTRICT POLICE DEPARTMENT

BACKGROUND

The Apple Valley Unified School District (AVUSD) is located in the High Desert of San Bernardino County. Its service area is generally to the east of Interstate 15 and is bisected by Highway 18. It includes most of the Town of Apple Valley and the surrounding unincorporated area. According to the District's website (<http://www.avusd.org>) the District maintains fifteen schools and *“serves just over 13,000 students ranging from preschool through twelfth grade, and offers an adult education program linked with Victor Valley College. AVUSD provides a safe, encouraging, and challenging learning environment in which students are given the opportunity to reach their full potential.”*

On April 3, 2002, the AVUSD Board of Trustees approved a Policy creating the Apple Valley Unified School District Police Department (AVUSD-PD) in accordance with California Education Code Section 38000 which permits establishment of such a department. Subdivision (b) of Section 38000 indicates the District *“... may employ peace officers, as defined by subdivision (b) of Section 830.32 of the Penal Code, to ensure the safety of school district personnel and pupils, and the security of the real and personal property of the school district.”* Penal Code Section 830.32 qualifies the authority of such school police officers as *“... peace officers whose authority extends to any place in the state for the purpose of performing their primary duty.”*

The current configuration of the AVUSD-PD is a Chief, five regular officers and six-part time reserve officers plus one dispatch supervisor, one dispatcher and two part-time clerical staff.

The San Bernardino County Grand Jury received a report of possible issues involving the AVUSD-PD pertaining to disposal of district vehicles. The Grand Jury elected to conduct an investigation under the authority of Section 933.5 of the California Penal Code.

During the course of that inquiry, it was immediately determined that district vehicles were not involved, but rather that, from January 2014 through December 2016, the AVUSD-PD had ordered over 700 vehicles towed from public roadways. The adjoining Hesperia Unified School District Police Department did not tow any vehicles during that same time period. The Snowline Unified School District Police Department in nearby Phelan towed only one abandoned vehicle during the same time frame. The San Bernardino Unified School District Police Department, an agency four times as large as AVUSD-PD, towed 272 vehicles during the same time period while the Fontana Unified School District Police Department, with 64 officers, towed only 169 vehicles. All of the vehicles ordered towed by the AVUSD-PD were towed by a single tow company in Apple Valley. An unknown number of the privately owned vehicles were subsequently lien sold by the tow company for fees and towing charges accrued.

METHODOLOGY

The Grand Jury utilized the following methodologies in their examination of the AVUSD-PD: personal interviews, telephonic interviews, sworn testimony, data received from the AVUSD and the AVUSD-PD, data received from Fontana Unified School District, data received from San Bernardino Unified School District, data received from the Hesperia Unified School District, data received from the Snowline Unified School District, information received from the California Commission on Peace Officer Standards and Training, information from the California Highway Patrol, personal inspection of sites and facilities, examination of reports, records, hiring a Graphic Information System (GIS) mapping expert, and a legal opinion provided by San Bernardino County Counsel's Office.

FACTS

A legal opinion prepared by the San Bernardino County Counsel's Office, at the request of the Grand Jury, found that school police officers are limited duty peace officers whose primary duty is to ensure the safety of school district personnel and pupils, and the security of the real and

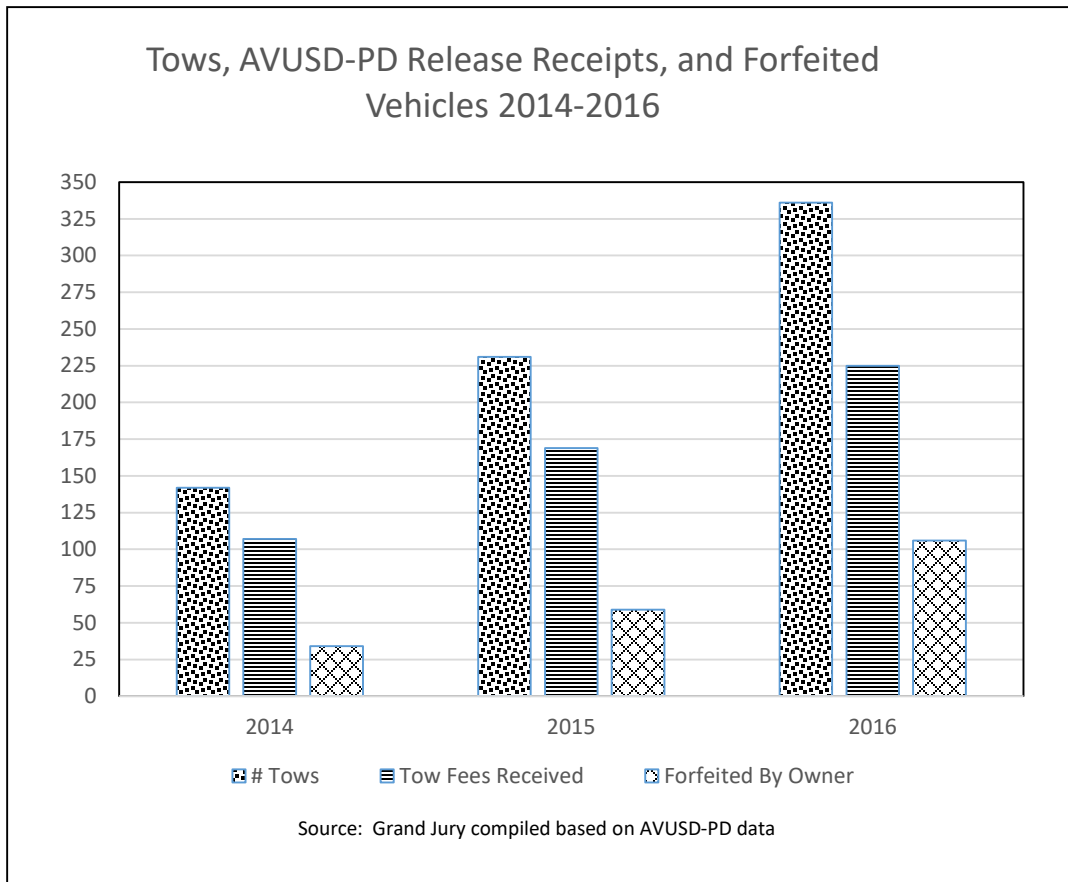
personal property of the school district. These officers have additional authority in Penal Code section 830.32 to make arrests when there is an immediate danger to persons or property, or the escape of the perpetrator of that offense. By application, the school police would not have general police powers off school property unless there was an immediate danger to a person or property or to the escape of the perpetrator of that offense. This opinion also quoted *People v. Landis* (2007) 156 Cal. App. 4th Supp. 12, which found that local peace officers with general police powers are limited in their authority to issue citations for infractions to only the jurisdiction of their agency, absent exigent circumstances.

All of the Apple Valley Unified School District police officers that were interviewed by the Grand Jury believed that Penal Code Section 830.32 permitted them to stop, cite, and tow vehicles anywhere in the state of California. None of the police officers were able to cite any legal opinion from the School District's legal counsel or the School District's administration. The Grand Jury was unable to find any School District actions directing officers to exert that level of authority.

The Town of Apple Valley Police Department has primary jurisdiction for all police services within the Town Limits. The Town contracts with the San Bernardino County Sheriff's Department to provide those services. Most law enforcement agencies that have concurrent jurisdiction with another law enforcement agency have a Memorandum of Understanding (MOU) to delineate responsibilities and coordinate procedures between the agencies. The Grand Jury requested a copy of the MOU between AVUSD and the Town of Apple Valley Police Department. AVUSD was unable to produce a copy of the MOU that had been signed or approved by either the Town or the District. They did produce a draft MOU from 2012, but it was unsigned and did not appear to have been approved by any of the entities. The lack of such an MOU can lead to mishandled investigations, miscommunication between agencies, and uncertainty over what types of crimes will be handled by each agency. The opinion of the San Bernardino County Counsel's Office does stress that an MOU with a general law enforcement agency cannot convey to a school district police department any greater authority than they have under the Education Code and the Penal Code.

In order to more fully understand the laws pertaining to towing of vehicles, an expert from the California Highway Patrol (CHP) was invited to instruct the Grand Jury. This expert reported that a law enforcement agency may tow or store a vehicle on a public roadway for a variety of reasons, but in all cases, it must provide notice to the registered owner and the legal owner of their right to a hearing on the legality of the tow. The CHP 180 form is a vehicle report for towed or impounded vehicles. The CHP provides the form (CHP180) at no charge to any such agency to facilitate a uniform method of notification.

Examination of the records of the AVUSD-PD, coupled with testimony from the AVUSD-PD clerical staff and officers, revealed that CHP 180 forms generally were completed for the vehicles ordered towed. However, the forms were never sent to the registered owner and the legal owner as mandated by Section 22852(a) of the California Vehicle Code unless there was a lien holder listed as the legal owner. CVC 22852(a) *"Whenever an authorized member of a public agency directs the storage of a vehicle, as permitted by this chapter, or upon the storage of a vehicle as permitted under this section (except as provided in subdivision (f) or (g)), the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a poststorage hearing to determine the validity of the storage."* AVUSD-PD officers interviewed said they sometimes gave a printed sheet to the driver that explained how to pay the administrative Vehicle Release Form Fee and retrieve the vehicle from the tow yard; however, an explanation to the driver of the process to request a poststorage hearing was not included. AVUSD-PD clerical staff reported that they assumed that the tow company would send the CHP 180 information to the interested parties. The clerical staff only sent a CHP 180 form to the legal owner when it appeared that there was a lienholder for the vehicle.



TOWED, RELEASE FEE RECEIPTS and FORFEITED VEHICLES

Following the tow of a vehicle, the driver must pay a Vehicle Release Fee to AVUSD-PD before the vehicle will be released by the tow company. An increasing number of drivers forfeited their car by not paying the fee.

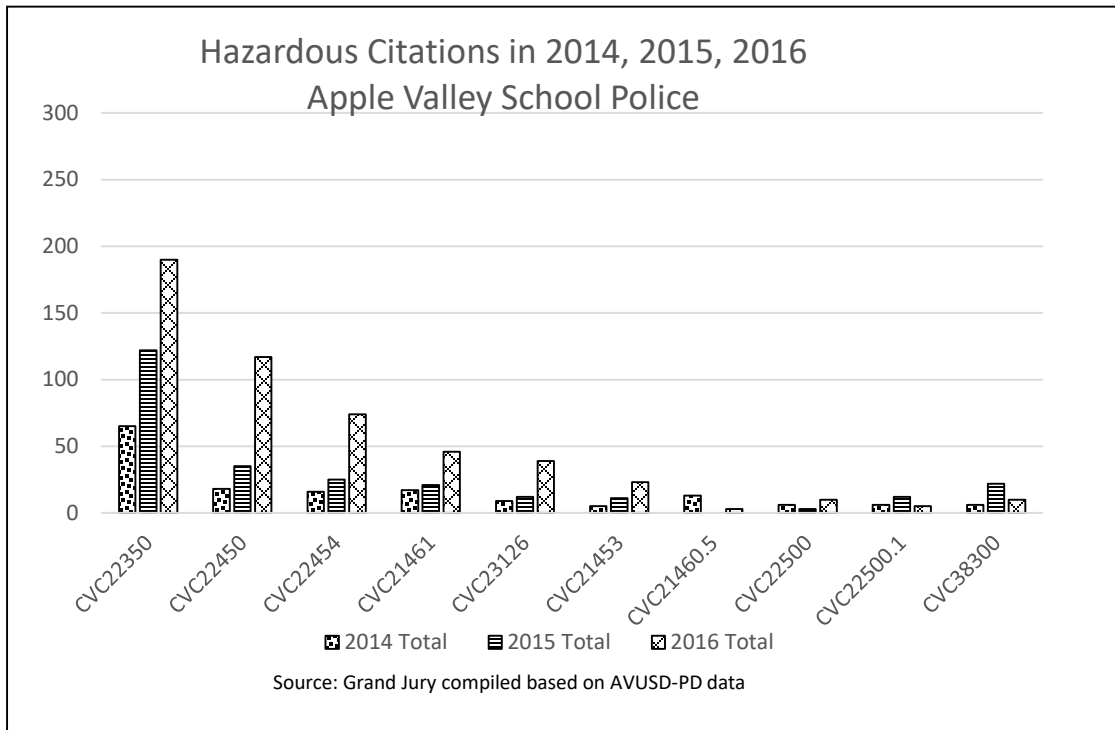
The Grand Jury reviewed almost 3,000 citations issued by the AVUSD-PD for the years 2014, 2015, and 2016. A significant majority of the citations were for non-hazardous moving vehicle code violations such as expired registration, equipment violations, expired driver's license, no driver's license in possession or not wearing a seat belt. For purposes of brevity in this report, the Grand Jury will discuss the most recent year, 2016, which continues the patterns seen in 2014 and 2015.

| CVC Code | Brief Description | Ranking | Towed 2014 | Not Towed 2014 | | Towed 2015 | Not Towed 2015 | | Towed 2016 | Not Towed 2016 |
|------------|-----------------------|--------------|---------------|-------------------|--|---------------|-------------------|--|---------------|-------------------|
| CVC22350 | Excessive Speed | Hazard | 3 | 62 | | 22 | 100 | | 7 | 183 |
| CVC22450 | Ignoring Signs | Hazard | 1 | 17 | | 6 | 29 | | 11 | 106 |
| CVC4000 | Car Registration | Not a Hazard | 54 | 39 | | 106 | 52 | | 171 | 83 |
| CVC16028 | Lack of Insurance | Not a Hazard | 30 | 29 | | 60 | 34 | | 64 | 80 |
| CVC22454 | Flashing Bus Lights | Hazard | 1 | 15 | | 3 | 22 | | 8 | 66 |
| CVC12951 | License Not Available | Not a Hazard | 2 | 13 | | 5 | 24 | | 3 | 48 |
| CVC27360 | Seat Belt Issue | Not a Hazard | 1 | 3 | | 0 | 3 | | 7 | 45 |
| CVC12500 | No License | Not a Hazard | 53 | 26 | | 67 | 20 | | 83 | 43 |
| CVC21461 | Disobeying Sign | Hazard | 3 | 14 | | 4 | 17 | | 5 | 41 |
| CVC23126 | Cell Phone in Use | Hazard | 0 | 9 | | 1 | 11 | | 3 | 36 |
| CVC14601 | Suspended License | Not a Hazard | 43 | 9 | | 54 | 16 | | 93 | 24 |
| CVC21453 | Red Light Violation | Hazard | 0 | 5 | | 0 | 11 | | 0 | 23 |
| CVC21460.5 | Illegal Left Turn | Hazard | 1 | 12 | | 0 | 0 | | 0 | 3 |
| CVC22500 | Pedestrian Crosswalk | Hazard | 1 | 5 | | 3 | 0 | | 1 | 9 |
| CVC22500.1 | Red Bus Zone | Hazard | 0 | 6 | | 0 | 12 | | 2 | 3 |
| CVC38300 | Disobeying Sign | Hazard | 1 | 5 | | 1 | 21 | | 2 | 8 |
| CVC24252 | Lighting Equipment | Not a Hazard | 0 | 1 | | 0 | 0 | | 4 | 15 |

Source: Grand Jury compiled based on AVUSD-PD data

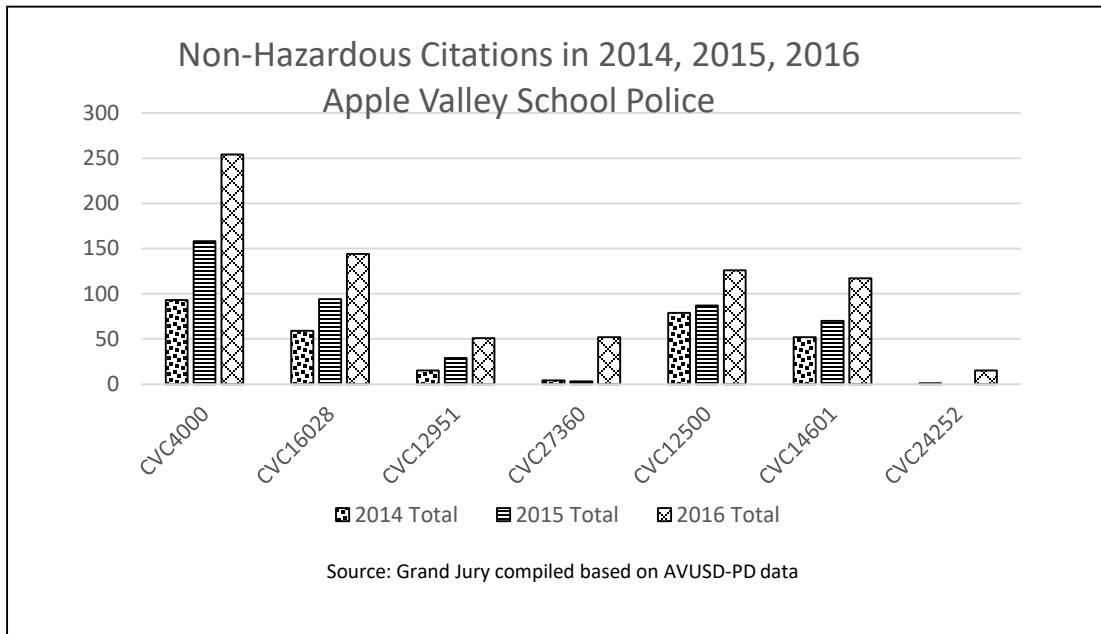
CVC SECTION, BRIEF DESCRIPTION, CLASSIFICATION, TOWED/NOT TOWED

The most frequent types of infractions are noted along with a brief description of the violation. Some appeared to be hazardous to students and pedestrians near a school site, but others were not hazardous to the general public.



HAZARDOUS CITATIONS BY YEAR

Most frequent hazardous violations cited. Excessive speed violations increased from 122 to 180 from 2015 to 2016.

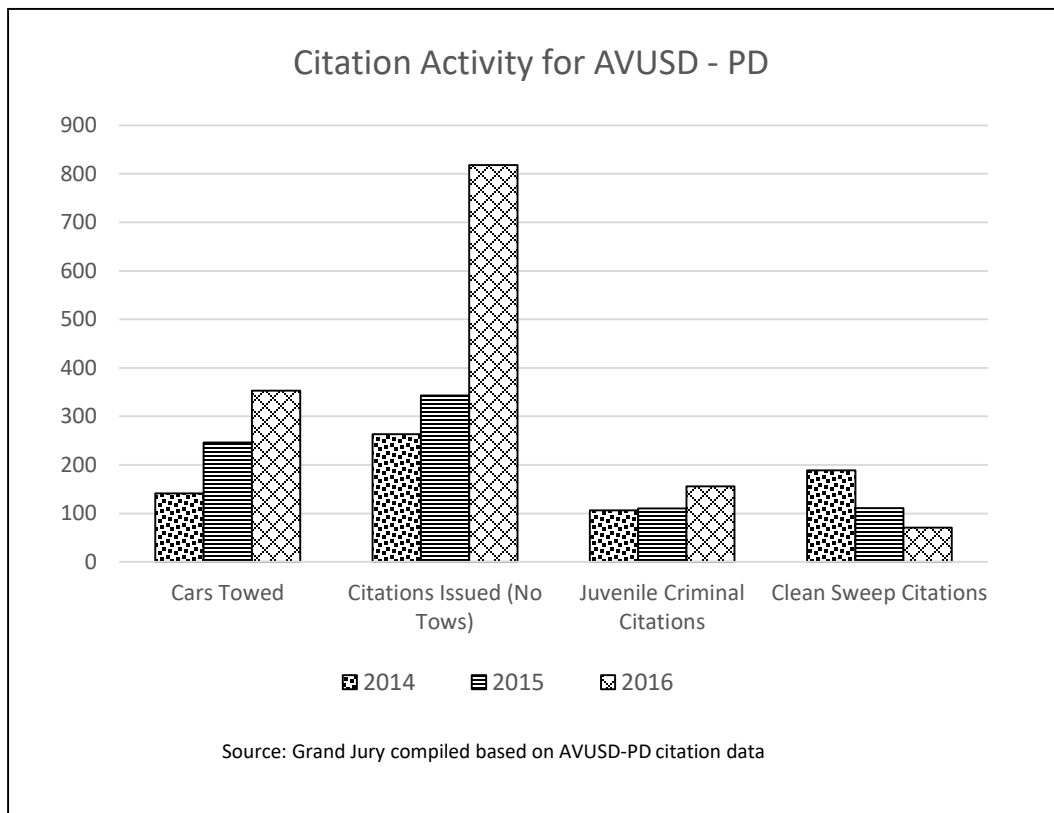


NON-HAZARDOUS CITATIONS BY YEAR

Almost one hundred more registration violations were cited in 2016 than in 2015. Lack of insurance violations ranked as the second most frequent citation. Neither represents a danger to staff or students.

The Grand Jury's examination of copies of the citations that were issued by AVUSD-PD in conjunction with the towing of vehicles revealed that most vehicles were not stopped for hazardous moving violations but for equipment or registration violations, and thus, outside of the authority of the AVUSD-PD to stop and detain drivers on a public roadway.

Over the three-year period that was examined by the Grand Jury, it appears that, as traffic citations and traffic activity by the AVUSD-PD increased, there was a corresponding decline in student related interactions, such as operation Clean Sweep, (a youth diversion program for minor or first offense violations) or on-campus citation activity.



AVUSD-PD CITATION ACTIVITY

2016 saw an increase of 107 cars towed over 2015. Juvenile criminal citations increased while the Clean Sweep diversion program citations decreased in 2016.

Several drivers of vehicles ordered towed by the AVUSD-PD were interviewed by the Grand Jury. One woman reported that she was stopped by AVUSD-PD on October 6, 2016 on Bear Valley Road and Central Avenue in Apple Valley at 11:23 p.m. at night because the license plate light on her vehicle was inoperative. The officer determined the vehicle had an expired license registration and ordered her vehicle towed and issued a citation. The driver did not feel comfortable in the presence of the officer and refused his offer of giving her a ride home. She subsequently walked about a mile to her home. She was unable to pay the fees to retrieve her car and it was ultimately lien sold at auction by the tow company. She was not at or near a school when she was stopped. In another incident, a man was stopped on Christmas Day 2016, at 8:45 p.m. The officer stopped him for an expired registration. The officer learned the man had a suspended driver's license. The driver told the Grand Jury that his suspended license was a surprise to him because he had only experienced a difficulty with a late child support payment. The officer cited the man for both violations and had his car towed to a storage facility, even though the driver's son was in the car with a valid driver's license and could have driven the vehicle home. While the driver was stopped near a school, it was 8:45 p.m. and school was not in session due to winter break.

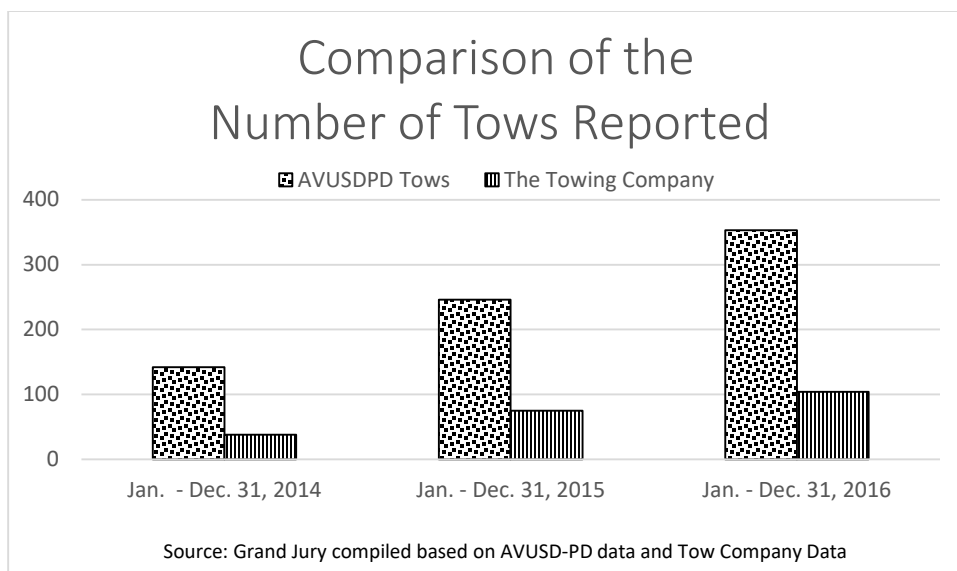
The AVUSD-PD "TOWED VEHICLE LOG" document is a manually completed chronological list of vehicles ordered towed by the AVUSD-PD. It includes the following columns: Date, Report Number, Veh. description, License, L/O, 180 sent, Date Released, Fee Receipt #. Each page contains 17 lines for entry of information. Examination of the document shows the "180 Sent" column was completed only when a lienholder was listed. All other lines showed the column as blank. There is no indication that the vehicle's registered owner or the legal owner was ever notified of their right to a hearing to determine the validity of the seizure and towing of a vehicle ordered towed by the AVUSD-PD, and thus, the registered and legal owners were often deprived of their right to a poststorage hearing. Vehicle Code 22852 (e) states: "*The agency employing the person who directed the storage shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.*" The AVUSD-PD administration could only recall one instance when a post storage hearing was requested.

The administrative Vehicle Release Form is currently completed by the clerical staff at the AVUSD-PD office upon payment of \$120.00 and verification that any registration or licensing deficiencies have been rectified. Once the Vehicle Release Form is completed and provided to the driver or owner, the vehicle may then be retrieved from the tow company upon payment of towing and storage fees, currently a minimum of \$250.00 plus \$50.00 per day beyond the first day.

The Grand Jury visited the office of the tow company and examined its storage area to estimate the capacity for storage and retention of towed vehicles. The inspection failed to locate any price schedules posted in the area accessible to the public as required by CA Vehicle Code 22651.07(a)(1)(A) "*Except as provided in subparagraph (B), post in the office area of the storage facility, in plain view of the public, the Towing Fees and Access Notice and have copies readily available to the public.*" Interviews with drivers who had their vehicle ordered towed by AVUSD-PD also reported that they saw no fee schedules posted and that, in several cases, the tow company required that the fees be paid by cash.

In December of 2016, after the Grand Jury commenced this inquiry, the AVUSD-PD changed its tow methodology to utilize a weekly tow rotation system amongst three local tow companies. It was reported that these two additional tow companies were approved and vetted for utilization and used by the San Bernardino County Sheriff Department. The Grand Jury independently confirmed that information. This three-tow rotation was done without any advice or guidance from the AVUSD Administrative Services division that is responsible for all contracts for service within the District. The AVUSD did not execute any contracts, MOUs or written understandings with any of the tow companies.

The Grand Jury requested information from the tow company as to the disposition of all of the 700 plus vehicles ordered towed by AVUSD-PD over the past three years. The tow company was only able to produce disposition information for 217 of the 727 vehicles ordered towed.



TOW VEHICLES REPORTED

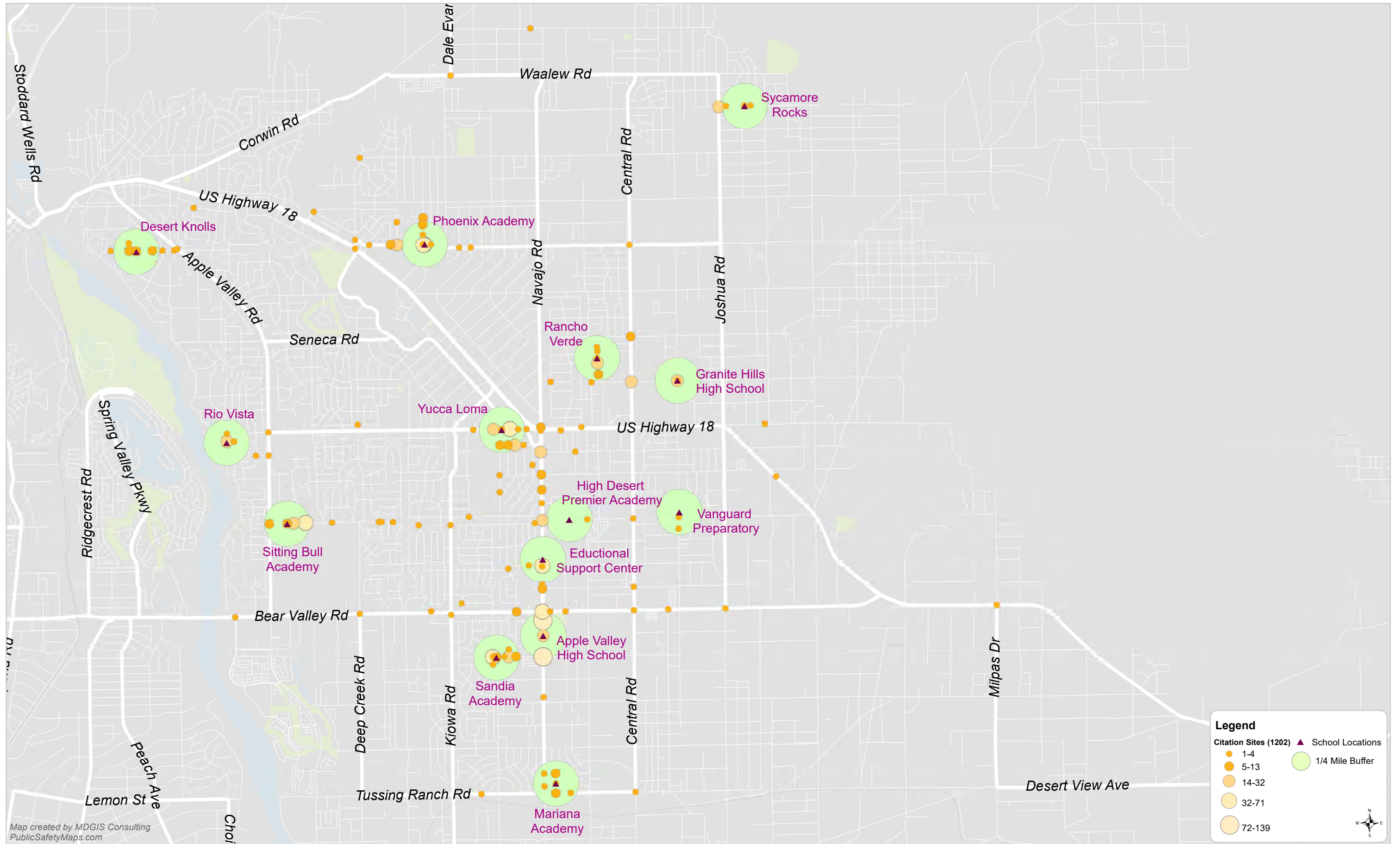
Towed vehicles reported by AVUSD-PD compared to the number of vehicles the towing company reports processing.

Sworn testimony by the representative of the tow company was that the information they produced was a complete and accurate representation of their files. The representative could not explain, nor accept, that there was a discrepancy of 510 vehicles unaccounted for in their records. The Grand Jury will leave to other agencies or organizations any attempt to examine the inability of the tow company to account for 510 vehicles that AVUSD-PD indicated were towed by them. On May 21, 2015 the Governing Board of the AVUSD, relying on CA Vehicle Code 22850.5 (a), approved a motion to increase the Vehicle Release Fee from \$95.00 to \$120.00. CA Vehicle Code 22850.5 (a) states, in part, "***A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles to the registered owner or the agent of the registered owner and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles to the registered owner or to the agent of the registered owner. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.***" (***emphasis added***)

The Vehicle Code used to justify the increase does not permit a school district to charge a Vehicle Release Fee because a school police department is not a "city, county, or city and county, or a state agency" but is a Special District. The Grand Jury was unable to establish any legal basis for charging such a fee by the AVUSD-PD

The AVUSD-PD sponsors Explorer Post Unit 95. This Explorer Post is open to students who have an interest in law enforcement. The Advisors are officers of the AVUSD-PD who volunteer their time to mentor the students. Several past members have advanced to law enforcement careers, including with the AVUSD-PD. The Post serves as a crime diversion program for at-risk youths.

Apple Valley Unified School District - Citation Locations



Legend

| | |
|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| ● Citation Sites (1202) | ▲ School Locations |
| ● 1-4 | 1/4 Mile Buffer |
| ● 5-13 | |
| ● 14-32 | |
| ● 32-71 | |
| ● 72-139 | |



FINDINGS

F1: The AVUSD relied on California Vehicle Code section 22850.5(a) to charge a vehicle release fee and to make increases in that fee. The vehicle code section relied upon gives authority to charge this fee to "...a city, county, or city and county, or a state agency." AVUSD-PD is not a city, county, or city and county or a state agency, and thus has no authority to charge this fee.

F2: Based on interviews with several AVUSD-PD personnel and several owners/drivers of vehicles that were towed at the direction of AVUSD-PD, the registered owners and legal owners were not notified of their right to a poststorage hearing to determine the validity of the storage, as mandated by California Vehicle Code section 22852(a).

F3: After interviewing several AVUSD personnel and owners/drivers of some of the vehicles that were towed by the authority of AVUSD-PD, proper notice of their right to a tow hearing was not given as mandated by California Vehicle Code section 22852(a).

F4: Through the combined interviews conducted by the Grand Jury of AVUSD personnel, interviews with drivers/owners of vehicles that were towed at the direction of the AVUSD-PD, review of documents provided by AVUSD-PD, and a legal opinion from San Bernardino County Counsel, it was determined that, in many cases, the AVUSD-PD did not have authority to stop, cite, and tow vehicles. Many owners could not pay the tow and storage fees, and their vehicles were subsequently lien sold.

F5: Based on interviews with AVUSD and AVUSD-PD personnel and based on a review of documents submitted by AVUSD, the AVUSD-PD was authorizing the towing of vehicles using only one tow service for a number of years, with no written contract, no signed Memorandum of Understanding, and without the involvement of the AVUSD Administrative Services Division.

F6: Based on interviews with AVUSD-PD personnel, interviews with AVUSD personnel, and a review of California Penal Code section 830.32, Education Code 38000, and case law, the majority of instances where the AVUSD-PD stopped, cited, and authorized the towing of vehicles exceeded the authority of the AVUSD police officers, since most instances did not indicate an immediate threat to persons or property.

F7: Based on the examination of citations written by the AVUSD-PD during the years 2014, 2015 and 2016, there is a constant increase in the number of citations written and vehicles being towed, with the vast majority of citations being for non-hazardous vehicle code violations. This activity results in the officers being taken away from their primary duty, which is the protection of school children, school personnel, and school property.

F8: The AVUSD has operated without a signed MOU with SBCSD.

F9: Based on the tow log received by the AVUSD-PD on all cars that department ordered to be towed by the only tow company used during the years 2014, 2015, and 2016, and compared to the cars that the tow company received during 2014, 2015, and 2016, over 500 cars are unaccounted for even though both the AVUSD-PD and the tow company stand by their records.

RECOMMENDATIONS

17-01: Refund any monies collected by Apple Valley Unified School District – Police Department for Vehicle Release fees.

17-02: Develop a procedure to assure the Apple Valley Unified School District – Police Department notifies the legal and registered owners of vehicles towed in the future of their right to a tow hearing.

17-03: Refund any towing and storage fees paid by any legal owner or registered owner who was denied the opportunity to request a tow hearing.

17-04: Provide restitution to any vehicle owner whose vehicle was lien sold as a result of the vehicle being ordered towed by Apple Valley Unified School District – Police Department in excess of their legal authority to do so.

17-05: Engage in a Request for Proposal (RFP) process for any non-district services requested by Apple Valley Unified School District – Police Department.

17-06: Clarify to all members of the Apple Valley Unified School District – Police Department their geographical area of responsibility and the limits of their authority.

17-07: Prioritize the duties and responsibilities of the Apple Valley Unified School District – Police Department to confirm with their primary duty of protecting school children, school staff, and school property.

17-08: Review all Memorandum of Understandings with school police departments and the San Bernardino County Sheriff's Department to insure that jurisdictional authority has not been exceeded by school police departments.

17-09: The appropriate state agency opens an investigation into this matter which is beyond the jurisdiction of the Grand Jury.

| <u>AGENCY</u> | <u>RECOMMENDATIONS</u> | <u>DUE DATE</u> |
|--------------------------------------------|-------------------------------|------------------------|
| Apple Valley USD | 17-01 through 17-07 | 10/1/2017 |
| San Bernardino County Sheriff's Department | 17-08 through 17-09 | 9/1/2017 |