

14-22 - Legal Detention: Refusal to Provide Identification

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services, (323) 890-5411



LEGAL DETENTION: REFUSAL TO PROVIDE IDENTIFICATION

In California, there is no stop-and-identify law which requires an individual to produce identification upon request by a peace officer. **During a lawful Terry stop or legal detention**, a deputy has the right to request the detained person present for examination "satisfactory identification," that may include a current driver's license or the functional equivalent. Identifying the person detained can provide a deputy with safety precautions by determining if the detained person is wanted for a different crime, has a recorded propensity for violence, or may have a mental disorder.

What can a deputy do if a person legally detained, refuses to identify themselves?

Law enforcement officers have many options should a legally detained person refuse to identify themselves. Some of the options are as follows:

- **Continue the detention** – A deputy may continue efforts to identify a person legally detained for a "reasonable time," in an effort to confirm their identity. Delays resulting from the actions of the detained person and/or changing circumstances, such as the discovery of suspicious substances and/or discovery of other possible criminal activities, all lend to the reasonable continuance of the detention.
- **Search for ID** – If the person denies having identification, but the deputy can see or feel they are carrying a wallet, the deputy should ask for consent to search the wallet. Absent obtaining consent to search the wallet, a deputy may order the legally detained person to look through the wallet themselves for the identification while the deputy watches the exploration of the wallet for their protection. Remember, pat down searches are for weapons only and a detained person cannot be patted down for the sole purpose of obtaining identification.
- **Arrest the detained person** - There are circumstances when refusal to identify oneself **MAY** subject an individual to arrest.

Vehicle Code section 40302 states, when a detained person has committed a non-felony vehicle code violation, they may be arrested and immediately taken before a magistrate if they fail to present their driver's license or "satisfactory identification," refuse to sign a promise to appear, demand an immediate appearance before a magistrate, or are charged with driving under the influence of a drug or alcohol.

A deputy may not arrest a person for violating 148 of the Penal Code merely because they refused to identify themselves.

Penal Code section 853.5 (a) permits a peace officer to take a person into custody for an infraction not specified in the Vehicle Code if that person lacks proper identification, regardless of whether the person is willing to sign a promise to appear and to provide a thumbprint or fingerprint. For additional information refer to Field Operations Support Services (FOSS) Newsletter 06-06, 853.5 PC-Infraction Release Procedures.

Persons who do not adequately identify themselves within a two-hour period and do not have sufficient funds to bail out, shall thereafter be booked.

Penal Code section 853.6 states, a misdemeanor prisoner shall be released except in cases of domestic violence, violation of domestic violence restraining order, stalking, unable to care for self due to medical/intoxication, violations under Vehicle Code section 40302, outstanding warrants, release would jeopardize the case, likelihood offenses would continue, demands to be taken before a magistrate, or watch commander's decision the arrestee will not appear or release would be unreasonable or unsafe (MPP 5-03/115.20 Misdemeanor Release Exceptions).

As a general rule, a person's failure to provide their name, in itself, is not a violation of any law. If the person lawfully detained refuses to provide their name or identification during the investigation and there is insufficient evidence to establish probable cause that the person has committed a crime, then the person must be released.

Witnesses may not be detained - If an investigation reveals that the person lawfully detained was not involved in a crime, but may have been a witness to the crime, they are not required to provide a name or identification and may not be detained for further questioning without their consent. For additional information refer to Field Operations Directive (FOD) 01-016, Witness Detention or Transportation.

If you have any questions regarding the contents of this newsletter, please contact Field Operations Support Services, at (323) 890-5411 or email FOSS@LASD.ORG.

References

California Penal Code sections 853.5 and 853.6

California Vehicle Code sections 40302 and 40307

Hiibel v. Sixth Judicial District Court of Nevada, 542 U.S. 177 (2005)

Kolender v. Lawson. 461 U.S. 352 (1983)

Delgado, 466 U.S. 210, 216 (1984)

Sharpe, 470 U.S. 675 (1985); Russell (2000)81 Cal.App.4th 96, 102-106

Loudermilk (1987) 195 Cal.App.3d 996

Martinelli, 820 F.2d 1491, 1494 (9th cir.1987)

Christian, 356 F.3d 1103, 1106 (9th cir.2004)

Chase c. (2015) 243 Cal.App.4th 107

People v. Long (1987) 189 Cal.App3d 77,87.

People v. Garcia, 145 Cal.App.4th 782, 52 Cal.Rptr.3d 70 (2006)

People v. Quiroga, 16 Cal.App.4th 961, pet. rev. den. (S034236 1993)

Terry v. Ohio. 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)

MPP section 5-03/115.20 Misdemeanor Release - EXCEPTIONS

Field Operations Support Services (FOSS) Newsletter 06-06, 853.5 PC-Infraction Release Procedures

Field Operations Directive 01-016, Witness Detention or Transportation

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O'Malley, N. E. (2019) Investigative detentions. *Point of View*, Spring/Summer 2019, 47-2.

Ginn, B. (2004) Stop-and-identify laws. *The Police Chief Magazine*