

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL ADDITIONS:
REQUIRING IDENTIFICATION**

DATE: September 25, 2021

APPROVED

Memo# 2021-027

BACKGROUND

In 2007, the US Supreme Court ruled the driver and the passengers are detained during all traffic stops.¹ Additionally, the passengers may remain detained for the duration of the stop.² Officers may, for officer safety, order the passenger in a vehicle stop to exit the vehicle.³ Likewise, officers may, for officer safety, order the passenger in a vehicle stop to remain inside the vehicle or get back into the vehicle if they exited.⁴ Asking a passenger for identification during a vehicle stop is not a separate detention and does not require separate justification. However, officers may not prolong the detention to identify the passenger in a vehicle stop unless they have a separate justification to identify that passenger other than the original vehicle stop.⁵

Officers are allowed to take reasonable investigative actions during a detention, including questioning subjects about their identity and verifying their identity.⁶ However, in 2019 the US 9th Circuit Court of Appeals ruled in a case regarding whether officers may *demand* identification from the passenger detained during a vehicle stop.⁷ In this decision, the circuit court held, when the passenger in a vehicle stop is detained pursuant to the above-described case law, and not as a result of independent reasonable suspicion of criminal activity, officers may not demand identification.

Some states have statutes mandating a person who is detained to identify themselves;⁸ however, California does not. The mere act of refusing to identify oneself during a detention, on its own, is not illegal and not a violation of Penal Code section 148(a)(1).⁹ When someone is detained and probable cause has not been established, the person is not obligated to identify themselves to law enforcement. It is only after probable cause is established that they are required to identify themselves. In cases where the subject refuses to identify themselves after probable cause has been established, the subject may, under certain factual circumstances, be charged with Penal Code section 148(a)(1) for resisting,

¹ *Brendlin*, 551 U.S. 249 (2007)

² *Johnson*, 555 U.S. 323, 333 (2009)

³ *Wilson*, 519 U.S. 408 (1997)

⁴ *Vibanco*, 151 Cal.App.4th 1, 14 (2007); *Williams*, 419 F.3d 1029, 1034 (9th Cir. 2005)

⁵ *Rodriguez*, 135 S. Ct. 1609 (2015)

⁶ *Summers*, 452 U.S. 692 (1981)

⁷ *Landeros*, 913 F.3d 862 (9th Cir. 2019)

⁸ *Hiibel*, 542 U.S. 177 (2004)

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

obstructing, or delaying a peace officer in the discharge of their duties. For example, if a person repeatedly refuses to identify themselves at the jail during a routine booking interview, significantly delaying the booking process, they are subject to Penal Code section 148(a)(1).¹⁰

Immediate detention after an observation of a vehicle code violation generally establishes probable cause, even in cases where the driver will be issued a citation.

Example 1: (Enforcement Stop pursuant to reasonable suspicion): An officer observes a vehicle that matches the description of a burglary that just occurred in the area and conducts a vehicle stop to investigate. The officer is prohibited from demanding the driver identify himself until after probable cause to arrest has been established. It is possible, probable cause may never be established during this contact and, therefore, the officer cannot demand the driver to identify himself. An officer may ask for identification at any time during this contact.

Example 2: (Enforcement Stop pursuant to probable cause): An officer observes a driver fail to stop at a stop sign. The officer immediately conducts a vehicle stop on the vehicle. The officer has established probable cause to cite the driver and, therefore, can demand identification from the driver. Any passengers in the vehicle are also detained. However, an officer may ask a passenger to identify themselves, but may not demand they do, without probable cause for that person. An officer may ask for identification at any time during this contact.

Notwithstanding the above, officers may always ask or request the public to voluntarily provide identification. In these cases, the request should be in the form of a question, not an order.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*.

L 2422 IDENTIFICATION DURING A VEHICLE ENFORCEMENT STOP PURSUANT TO REASONABLE SUSPICION:

Added 09-25-21

During a vehicle enforcement stop based on reasonable suspicion, not probable cause of a law violation, the driver and any passengers are temporarily detained. Officers may ask for or request identification of any of the vehicle occupants. There is no legal requirement for a vehicle occupant to identify themselves unless probable cause of a legal violation is established. Therefore, refusal of the vehicle occupants to identify themselves, does not, on its own, establish probable cause to arrest, and does not constitute a violation of Penal Code section 148(a)(1).

If probable cause of a law violation is established on any of the vehicle occupants during a vehicle enforcement stop, refusal of identification by those persons to

¹⁰ *People v. Quiroga*, 16 Cal.App.4th (1st Dist. 1993)

which the probable cause applies, shall be managed according to Duty Manual section L 2422.5 – Identification During a Vehicle Stop Pursuant to Probable Cause.

L 2422.5 **IDENTIFICATION DURING A VEHICLE ENFORCEMENT STOP PURSUANT TO PROBABLE CAUSE:**

Added 09-25-21

During a vehicle enforcement stop based on probable cause of a law violation, both the driver and any passengers are temporarily detained. Officers may ask for or request identification of any of the vehicle occupants.

Any person to which probable cause of a law violation applies is required to identify themselves. In this case, officers may demand identification. Refusal of any person detained pursuant to probable cause during a vehicle enforcement stop may, under certain circumstances, constitute a violation of Penal Code section 148(a)(1).

Any person detained as a passenger in the vehicle, without probable cause, is not required to identify themselves. While the officer may ask for or request the identification, there is no legal requirement for a passenger to identify themselves unless probable cause of a legal violation is established. As a result, refusal of the vehicle passenger to identify himself does not, on its own, establish probable cause to arrest, and does not constitute a violation of Penal Code section 148(a)(1).

If a passenger is detained with reasonable suspicion, they shall be managed according to Duty Manual section L 2422 — Identification During a Vehicle Enforcement Stop Pursuant to Reasonable Suspicion.

L 2826 **IDENTIFICATION DURING AN ARREST:**

Added 09-25-21

Pursuant to Section L 2802, an arrest is based on probable cause. As a result, officers may demand identification from an arrested individual, including arrestees who will be issued a citation. Refusal or failure of an arrested individual to identify themselves, under certain circumstances, may constitute a violation of Penal Code section 148(a)(1).

L 3312 **REQUESTING/DEMANDING IDENTIFICATION FOR A STREET CHECK:**

Added 09-25-21

Consensual Encounter

An officer may ask for identification from a person during a consensual encounter. An officer may not demand identification from a person during a consensual encounter. There is no statutory requirement for a person contacted during a consensual encounter to identify oneself, unless probable cause is established during the consensual encounter.

Reasonable Suspicion

An officer may ask for identification from a person detained with reasonable suspicion. However, there is no statutory requirement for a person contacted during a detention, without probable cause, to identify oneself, unless probable cause is established during the contact.

Probable Cause

An officer may ask for or demand identification from a person detained with probable cause. Refusal to identify oneself after probable cause has been established may, under certain circumstances, constitute a violation of Penal Code section 148(a)(1).

L 3405

IDENTIFICATION DURING A CITIZEN CONTACT:

Added 09-25-21

Pursuant to L 3401, a Citizen Contact is based upon consent and not upon reasonable suspicion to detain or probable cause to arrest. As a result, officers may ask for identification during a Citizen Contact. Officers may not demand identification during a Citizen Contact. The refusal or failure of an individual contacted during a Citizen Contact to identify themselves or to produce identification upon request of a police officer cannot be the sole cause for detention or arrest. In addition, officers may not threaten an individual contacted during a Citizen Contact with arrest solely upon their refusal to identify themselves.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



Anthony Mata
Chief of Police

AM:SD:DK