



FAILURE TO IDENTIFY

Question: Can an officer charge or arrest a person for Penal Code Section 148(a)(1) Resisting/Obstructing who fails to provide identification during a detention or after arrest?

Answer: No, unless they fail to provide identification during the booking process.

Case Law

Martinelli v. City of Beaumont, 820 F.2d 1491 (9th Cir. 1987)

Facts: Officers had reasonable suspicion to believe Martinelli was involved in a hit-and-run collision. They approached her in a laundromat and asked her for identification. She refused to identify herself to officers for over 30 minutes, and then walked away when her laundry was done. Officers testified that they arrested Martinelli under California Penal Code section 148 “for delaying a lawful police investigation by refusing to identify herself.”

Holding: Because California does not have a specific “stop and identify” statute, the Ninth Circuit held that “use of Section 148 to arrest a person for refusing to identify herself during a lawful *Terry* stop violates the Fourth Amendment’s proscription against unreasonable searches and seizures.”

People v. Quiroga, 16 Cal. App. 4th 961 (1993)

Facts: The police arrested Quiroga for possession of cocaine following a search of his home. After his arrest, he refused to give his name although a police officer repeatedly asked him for identification both in the patrol car while he was being transported to the police station and while at the police station. Upon his arrival at the jail, he persisted in refusing to give his name during the booking process. After about 30 minutes, one of the correctional officers recognized him and provided his identity.

Holding: While the act of refusing to disclose one's identity at the booking stage of arrest “unquestionably” obstructs a police officer in the discharge of his or her duties, a mere “refusal to disclose personal information following arrest for a misdemeanor or infraction cannot constitute a violation of Penal Code section 148.”

“Under California law, the fact that someone verbally challenges a police officer's authority or is slow to comply with orders does not mean that he or she has delayed an investigation.”

Before booking, the Fifth Amendment renders a suspect “free to refuse to identify himself or to answer questions” without violating section 148.

In re Chase C., 243 Cal.App.4th 107 (2015)

Holding: Chase's refusal to identify himself, preceding booking and before even being placed in a patrol car, was protected conduct under the Fifth Amendment. Only if Chase had refused to provide his identity at the booking stage, or had provided false identifying information, would his conduct violate section 148.



TRAINING OUTLINE

United States v. Landeros, 913 F.3d 862, 869 (9th Cir. 2019)

Holding: Law enforcement officers may not extend a lawfully initiated vehicle stop because a passenger refuses to identify himself, absent reasonable suspicion that the individual has committed a criminal offense.

United States v. Christian, 356 F.3d 1103 (9th Cir. 2004)

“While failure to identify oneself cannot, on its own, justify an arrest, nothing in our case law prohibits officers from asking for, or even demanding, a suspect’s identification... so long as the request is reasonably related to the detention.”

Statutory Law

In California, there is no stop-and-identify law which requires an individual to produce identification upon request of a peace officer, except as follows:

Vehicle Code § 12951 (an infraction):

- (a) People must have a valid driver’s license in their “immediate possession at all times when driving a motor vehicle upon a highway.”
- (b) Drivers of a motor vehicle shall present their “license for examination upon demand of a peace officer enforcing the provisions of this [the Vehicle] code.”

Penal Code § 853.5 (paraphrased):

- (a) When people are arrested for an infraction, they may be released according to the procedures for the release of persons arrested for a misdemeanor. In all cases, except as specified in Vehicle Code Sections 40302, 40303, 40305, and 40305.5, in which people are arrested for an infraction, a peace officer shall only require the arrestees to present their driver’s license or other satisfactory evidence of their identity for examination and to sign a written promise to appear contained in a notice to appear. If the arrestees do not have a driver’s license or other satisfactory evidence of identity in their possession, the officer may require the arrestees to place a right thumbprint on the notice to appear.

Penal Code § 853.6 (paraphrased):

- (a)(1) When a person is arrested for a misdemeanor, and does not demand to be taken before a magistrate, that person shall, be cited and released, although nothing prevents an officer from first booking an arrestee.
- (i) When a person is arrested for a misdemeanor, that person shall be cited and released unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person or shall indicate, on a form to be established by the officer’s employing law enforcement agency, which of the following was a reason for the nonrelease:
 - (5) The person could not provide satisfactory evidence of personal identification.



TRAINING OUTLINE

Bottom Line

During a lawful legal detention, an officer has the right to request or demand the detained person provide identification. However, an officer cannot arrest the detained person for failure to identify under Penal Code Section 148(a)(1). This rule applies no matter what the detention is for (e.g., to investigate a crime, to give a trespass notice under 626, etc.)

So, what can an officer do if a person lawfully detained refuses to identify?

- 1.) Officers may continue the detention for a reasonable time while trying to ascertain the person's identity.
- 2.) Officers cannot conduct a pat down to search for a wallet, and an officer cannot pull a wallet out of a suspect's pocket during a lawful pat down unless the officer can articulate how the object could be a weapon; however, if an officer sees the shape of a wallet or feels a wallet during a lawful pat down, the officer should ask consent to search the wallet for identification.
- 3.) If the officer has probable cause to arrest the detained person for an infraction or misdemeanor, the officer should arrest the person and book under the authority of PC 853.6 because of the failure to provide satisfactory identification.

On a related note:

If an investigation reveals that the person lawfully detained was not involved in a crime, but may have been a witness to the crime, the person is not required to provide a name or identification and may not be detained for further questioning without consent.