

**TRAINING BULLETIN
BARSTOW POLICE DEPARTMENT**

Demanding Identification

Contrary to a not uncommonly held belief that law enforcement contacts with private citizens require some articulable reason to be lawful, it is a general rule that any peace officer may approach and contact any person in public, or anywhere else the officer has a legal right to be, and engage that person in conversation. (*Wilson v. Superior Court* (1983) 34 Cal.3rd 777.)

No probable cause or even a reasonable suspicion is needed.

The law does not prohibit an officer from approaching any person in a public place and engaging that person in uncoerced conversation. (*People v. Divito* (1984) 152 Cal.App.3rd 11, 14; *Florida v. Royer* (1983) 460 U.S. 491 [75 L.Ed.2nd 229].)

"(L)aw enforcement officers do not violate the **Fourth Amendment** by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, (or) by putting questions to him if the person is willing to listen." (*Florida v. Royer*, *supra*, at p. 497 [75 L.Ed.2nd at p. 236].)

But: The person contacted is free to leave and need not respond to an officer's inquiries.

In such circumstances, a person need not identify himself, nor even talk to a police officer (*Kolender v. Lawson* (1983) 461 U.S. 352 [75 L.Ed.2nd 903]; *Brown v. Texas* (1979) 443 U.S. 47, 52 [61 L.Ed.2nd 357].). **Even during a lawful detention, members of the public are under no duty to answer questions, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.** (*Carey v. Nev. Gaming Control Bd.*, 279 F.3d 873, 881-82 (9th Cir. 2002). However, there is nothing improper with a peace officer "demanding" that a detained person properly identify himself. (*United States v. Christian* (9th Cir. 2004) 356 F.3rd 1103.)

A passenger in a lawfully stopped vehicle may be "asked" for his identification. (*United States v. Diaz-Castaneda* (9th Cir. 2007) 494 F.3rd 1146, 1152-1153.)

The **Fourth Amendment** is not implicated by asking a detained individual for identification, at least so long as the detention is not unnecessarily prolonged in the process. (*People v. Vibanco* (2007) 151 Cal.App.4th 1, 13-14.)

The only issue left hanging by *Christian* and *Vibanco* is whether a detained suspect must properly identify himself, or be subject to arrest for refusing to do so. The Court seemed to hint, however, that he *cannot* be forced to identify himself.

However, the United States Supreme Court ruled in *Hiibel v. Sixth Judicial District Court of Nevada* (2004) 542 U.S. 177 [159 L.Ed.2nd 292], that a person who is lawfully "detained" may be charged with a criminal violation for refusing to identify himself. Such an identification requirement violates neither the **Fourth** nor **Fifth Amendment** (self-incrimination) rights of the detained person. ("The principles of *Terry v. Ohio* (1968) 392 U.S. 1) permit a State to require a suspect to disclose his name in the course of a *Terry* stop.") (*Id.*, at p. 187.)

Note, however, that the Court, in *Hiibel*, conceded that "a case may arise where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense," thus implicating the **Fifth Amendment** right against self-incrimination. (*Id.*, at p. 191.)

Some states have a specific statute making it a misdemeanor to refuse to identify oneself when lawfully detained in a non-vehicular situation. **California does not have such a specific statute.**

See *People v. Quiroga* (1993) 16 Cal.App.4th 961, upholding a **P.C. § 148** conviction for an *arrestee* who refused to identify himself during the booking process, and *People v. Christopher* (2006) 137 Cal.App.4th 418, where giving a false name when arrested for shoplifting was held to be a violation of **P.C. § 148**.

It still follows, however, that a person who is subject to a police contact or lawful detention is **not** required to identify himself. (See *Kolender v. Lawson*, *supra*.)