

# TRAINING



# BULLETIN

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Alpha Index: Traffic Citations:  
Evidence of Identity

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*"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."*

## TRAFFIC CITATIONS: EVIDENCE OF IDENTITY

California Vehicle Code Section (VC §) 40302(a) requires a person who "fails to present his driver's license or other satisfactory evidence of his identity for examination" to be "taken without unnecessary delay before a magistrate." The Oakland Police Department policy regarding arrests pursuant to VC § 40302(a) requires reasonable effort to identify the person prior to arrest.

When a person is to be cited for any violation of the California Vehicle Code and is unable to present valid identification, he/she shall **not** be arrested or searched incident to arrest under the authority of VC § 40302(a) unless all reasonable efforts to establish identity have failed.

Satisfactory evidence of identity means that degree of oral or documentary evidence reasonably required to assure the officer that a person is who he or she claims to be, taking into consideration the nature of the identification presented. The burden of providing the identification is on the person detained.

A Selective Service Card, birth record, military discharge papers, Social Security Card, and an employment identification card may suffice as corroborating evidence of identity if the information presented appears to be genuine. Photo identification cards issued by another country to its citizens or nationals are considered valid if the card meets the requirements of OMC 2.34.010. Driver's license records, CORPUS (Criminal Oriented Record Production Unified System)/CRIMS (Criminal Records Information Management System) records, and RMS records are other means of verifying identification.

Officers shall not handcuff a person to be cited merely because they are unable to immediately present identification. Nothing in this policy, however, prohibits handcuffing and/or pat searching the person when reasonable suspicion exists to believe the driver may be armed, dangerous, or a flight risk. (Refer to TB I.O-2, Legal Aspects of Searching Persons and III-B.07, When to Use Handcuffs).

An arrest under authority 40302(a) is not justified when an officer has prior knowledge of a person's identity.

### Proper Applications of California Vehicle Code Section 40302(a) to Arrest

1. An officer stopped a vehicle for a traffic violation. The driver was not in possession of his driver's license nor any other form of identification. The officer conducted a file check of the driver using driver's license records, CORPUS, CRIMS (Criminal Records Information Management System) records, and RMS. After unsuccessfully identifying the person pursuant to exhausting all reasonable means to identify the person, the officer elected to place the person under arrest for VC § 40302 (a). The officer ordered the driver out of the vehicle, conducted a search incident to arrest, and located crack cocaine in the driver's pant pocket.



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2. An officer stopped a vehicle for a traffic violation. The driver was not in possession of his driver's license nor any other form of identification. While the officer was attempting to identify the driver using various databases, the officer observed the driver to be nervous and repetitively reaching in his waist band. Fearing the driver may be reaching for a weapon, the officer elected to remove the driver from the car, handcuff him and conduct a pat search. Pursuant to the pat search, the officer located a loaded firearm. The driver was subsequently arrested for illegal possession of a firearm.

**Improper Applications of California Vehicle Code Section 40302(a) to Arrest**

1. An officer stopped a vehicle for a traffic violation. The driver was not in possession of his driver's license nor any other form of identification. Without making a reasonable attempt to identify the driver, the officer placed him under arrest under the authority of VC § 40302 (a).
2. An officer stopped a vehicle for a traffic violation. The driver was not in possession of his driver's license but did have his work identification from Alameda County Social Services with his name and picture on it. He was also in possession of his checkbook and the vehicle was registered to him. The officer arrested the driver and transported him to North County Jail for VC § 40302(a).
3. An officer stopped a pedestrian for crossing the street against the red light. The pedestrian was not in possession of her identification nor any other form of identification. The officer elected to place the pedestrian under arrest, handcuff her, and search her incident to arrest. While searching her person, the officer found a small twist of suspected crack cocaine in her pant pocket. While interviewing the pedestrian on scene, the officer was able to determine her identity using CRIMS. The officer transported her to North County Jail and booked her on suspicion of being in possession of narcotics.

The search of the pedestrian was illegal because it was non-custodial.

4. An officer stopped a vehicle for an inoperable taillight. The driver was unable to produce neither a driver's license nor any other form of identification. Because the driver was unable to produce identification, the officer removed the driver from the vehicle, placed handcuffs on him, and completed a pat search. After interviewing the driver, the officer was able to identify him using CRIMS. The officer removed the handcuffs and released the person with a citation.

It was improper for the officer to remove the driver from the vehicle, handcuff him, and search him merely because the driver did not have identification. An officer must be able to articulate that the driver posed a dangerous risk in order to handcuff the driver or conduct a pat search.