

ExCop-LawStudent

General ramblings of a former police officer turned law student

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May 9, 2013 **Texas Failure to Identify Law, What it Says vs. What Police Think It Says**

ExCop-LawStudent Uncategorized Civil rights violation, Failure to identify, Fourth Amendment to the United States Constitution, Illegal arrest, police, Police abuse, Police officer 9 Comments

The Texas Failure to Identify law is fairly simple. Why don't police get it? It states:

(a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) Except as provided by Subsections (d) and (e), an offense under this section is:

- (1) a Class C misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class B misdemeanor if the offense is committed under Subsection (b).

(d) If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense, the offense is:

- (1) a Class B misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class A misdemeanor if the offense is committed under Subsection (b).

(e) If conduct that constitutes an offense under this section also constitutes an offense under [Section 106.07, Alcoholic Beverage Code](#), the actor may be prosecuted only under Section 106.07.

Tex. Pen. Code Ann. § 38.02.

OK, it is fairly simple. If you are under arrest refuse to provide your name, date of birth, or residence address, you commit a Class C misdemeanor unless you have warrants outstanding, when it is a Class B misdemeanor. If you are either under arrest or lawfully detained, it is an offense to provide a false name, date of birth or address. The later is a Class B or A misdemeanor, dependent on whether you have outstanding warrants.

What is not an offense is refusing to provide your name, date of birth, or residence address when you are lawfully detained. See *Dutton v. Hayes-Pupko*, No. 03-06-00438-CV, 2008 Tex. App. LEXIS 6030, 2008 WL 3166324 (Tex. App.—Austin 2008, no pet.). The court held that Deputy Derrick Dutton had arrested Sheryl Hayes-Pupko without probable cause since the law did not require her to identify herself while she was only being detained.. Dutton’s mistake of law did not provide a defense for the false arrest claim.

Unfortunately, this is not unusual for Texas. Police officers in this state have an idea that they have the right to identify anyone at anytime for any or no reason. The courts have repeatedly slapped them down on this.

“The application of Tex. Penal Code Ann., Tit. 8, § 38.02 (1974), to detain appellant and require him to identify himself violated the [Fourth Amendment](#) because the officers lacked any [reasonable suspicion](#) to believe appellant was engaged or had engaged in criminal conduct. Accordingly, appellant may not be punished for refusing to identify himself, and the conviction is Reversed.” *Brown v. Texas*, 443 U.S. 47 (1979).

“It is clear petitioner was arrested and convicted for his refusal to answer Officer Jennings’ question requesting that petitioner identify himself. This is impermissible even in the context of a lawful investigatory stop.” *Spring v. Caldwell*, 516 F. Supp. 1223 (S.D. Tex. 1981), *reversed on other grounds* 692 F.2d 994 (5th Cir. 1982).

“First, Officer Lowe obtained identification from each occupant of the automobile though he had no legal basis whatever for demanding them.” *Lewis v. State*, 664 S.W.2d 345 ([Tex. Crim. App.](#), 1984).

“Moreover, the Supreme Court has previously dealt with a case in which Texas police officers demanded that an individual identify himself even though they had no reasonable suspicion that he had committed a crime. In *Brown v. Texas*, the Court [11] ruled that Texas Penal Code Ann. § 38.02 (a), as enacted by the Texas legislature in 1974, was unconstitutional because it allowed an officer to stop and demand identification of an individual without any specific basis or belief that he was involved in criminal activity.” *Weddle v. Ferrell*, No. 3:99-CV-0453-G, 2000 U.S. Dist. LEXIS 2659, 2000 WL 256891 (N.D. Tex. 2000).

“Officers have the right to conduct an investigation of a driver following a traffic violation, but do not have authority to investigate a passenger without reasonable suspicion.” *St. George v. State*, 237 S.W.3d 720 (Tex. Crim. App. 2007) (holding that arrest of passenger for failure to identify not valid absent legal detention).

Yet we still see police officers demand identification in Texas and threaten arrest (or actually make arrest) on Failure to Identify when in fact, no offense has occurred.

Examples of idiotic reasoning by officers:



At 1:40 the officer claims that he “automatically” has reasonable suspicion when someone fails to identify themselves.



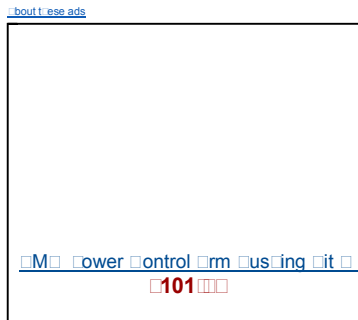
Here, the lady was basically arrested because she was filming. The charge was failure to identify, but she was never asked for ID.



Alice Police Officer Nick Juarez arrested this individual because he refused to identify himself. Note that there was no suspicion of criminal activity, and Juarez made a statement that he didn't want to appear on Youtube. How's that working for you?

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In "38.02 Texas Penal Code"

9 Comments (+add yours?)

Arrest for Failure to Identify in Houston CopLaw Student
 May 09, 2013 @ 18:06:15

 gindorra
 May 10, 2013 @ 05:31:03


Section d would seem to run afoul of the 5th amendment. If you are a fugitive from justice, say for example having escaped from prison, then identifying yourself would be incriminating.

 CopLaw Student
 May 10, 2013 @ 06:23:07

If you are under arrest, there is no Fifth Amendment right to conceal your identity. If you are not under arrest, the law does not require you to identify yourself, but you are not allowed to actively lie about who you are, in much the same way that perjury works.

 eup
 May 10, 2013 @ 06:53:40

Just a reminder for those outside Texas: check your local laws for mileage whether there's a "stop and ID" statute. Hiibel v. Sixth Judicial District Court of Nevada Et Al. 542 U.S. 177 (2004) holds that requiring a suspect to disclose his/her name in the course of a stop and frisk does not violate the 4th or 5th Amendments. Five states (Arizona, Indiana, Louisiana, Nevada, and Ohio) explicitly impose an obligation to provide identifying information when detained. Five others (Arkansas, Florida, Georgia, New Hampshire, and Rhode Island) can consider failure to identify as one factor to be considered in a decision to arrest. And seven states (Arizona, Florida, Indiana, Louisiana, New Mexico, Ohio, and Vermont) explicitly impose a criminal penalty for noncompliance with the obligation to identify oneself. A grown man knows the world he lives in.

 CopLaw Student
 May 10, 2013 @ 10:43:59

Good point, but even in a "must identify" state, the police still must have reasonable suspicion to suspect you of a crime in order to detain you. Hiibel v. Nevada, 542 U.S. 177, 184 (2004); Brown v. Texas, 443 U.S. 47, 51 (1974); Terry v. Ohio, 392 U.S. 1, 21 (1968).

 Jeff Gra
 May 10, 2013 @ 19:19:13

ExCop Law Student, check out this video of my outrageous arrest at the hands of two Lawtey FL police officers.

<http://m.youtube.com/watch?v=PIEUsHMX2jQ>

 Burgers llda
 May 20, 2013 @ 07:16:07

What about Texas obstruction / hindering an investigation law?

Maybe the more specific statute you cite pre-empts it in failure to id situations, or maybe texas doesn't have obstruction law, but this seems like a potential problem for a Texan who does not want to id during a lawful detention.



er acesup

May 28, 2013 @ 00:35:49

Great information in your blog. I was a victim of this type of illegal arrest and the 3rd COA case decision is mentioned in your story. NO. 03-06-00438-CV Williamson County made the officer Sgt. Dutton that illegally arrested me and used excessive force in charge of training new officers. I will soon have a website that includes Dutton's testimony at the criminal pre-trial and the civil trial.

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Jun 02, 2013 @ 23:00:30

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