



OAKLAND POLICE DEPARTMENT

Surveillance Impact Report: Mobile Identification Devices (MID)

1. Mobile Identification Devices (MID) and How They Work

Mobile Identification Devices (MID) are small enough to be handheld, and contains an optical sensor to scan fingerprints and transmit them to look for matches within local databases. MID's are not investigative tools – they only allow personnel to attempt to match fingerprints of individuals who are to be arrested with possible matches from past arrests in Alameda and Contra Costa Counties.

The MID uses the Bluetooth radio standard to send a scanned image of a fingerprint to a police vehicle mobile data terminal (MDT), which can connect with special software. The software accesses a regional fingerprint database shared by Alameda and Contra Costa Sheriff's Offices called Cogent Automated Fingerprint Identification System (CAFIS).

The MDT software sends the fingerprint digital image to CAFIS where the Alameda and Contra County CAL-ID Mobile Web ID system runs the fingerprint against the Alameda County Consolidated Records Information Management System (CRIMS) and the Contra Costa County Automated Regional Information Exchange System (ARIES) Systems to cross reference the scanned image to look for matches. The software match process uses a graphic representation of the print as a mathematical model of the relationships between the ridges of the fingerprint image. This mathematical measuring of friction ridges allows the image to be transmitted as a string of numbers the Automated Fingerprint Identification System (AFIS) databases can use.

Search results are sent back to MDTs. If a search result ends in a match with CAFIS, a fingerprint record will appear in the MID with the following:

- Transaction Number;
- Main Number,
- Name on Record;
- Date of Birth (DOB);

- Sex;
- Person File Number (PFN) / Juvenile File Number (JFN); and
- Arrest Booking Photo (if one is on file).

The hit will only return with the record hit (not a list of possible matches); a hit means a 100 percent match. No hits return with the display, "No hit." A "No Hit" means only that the subject's fingerprints are not in the CAFIS or ARIES database.

2. Proposed Purpose

The sole purpose of the MID is to allow police to identify individuals who do not possess acceptable forms of identification (e.g. driver's license or passport) in cases where they otherwise do not need to be booked in the Alameda County Jail. State law requires police to identify individuals to be cited for an infraction or misdemeanor; arrest and booking into jail is legally required when an acceptable form of ID cannot be obtained. Police need to know who you are when a citation is appropriate.

For situations where an individual must face custodial arrest, OPD currently transports individuals to the Alameda County Sheriff's Office (ACSO) Santa Rita Jail in Dublin, CA, where they are turned over to ACSO deputies for intake and identification.

In 2018, there were eight arrests where California Vehicle Code section 40302(a) or (b)¹ was one of the listed offenses (one case as for 2019 as of October 17, 2019). These are instances where the initial stop and/or citation was merely for a traffic violation but adequate identification could not be made. However, the arrests involving 40302 VC are not the only instances of subjects being booked on citable misdemeanors due to a lack of identification. There are countless situations where individuals faced custodial arrest at Santa Rita Jail where a citation would have been an appropriate remedy. For 2018, OPD made 8,239 custodial arrests for 16,853 charges. 6,940 of these arrests (84 percent) included either a felony charge, a misdemeanor charge that required an arrest (warrant, domestic violence, firearms violation), or both. The remaining 1,299 arrests involved over 100 different charges; Table 1 below lists the top categories (>30 arrests each). In many of these cases, custodial arrest would be the best option even when the arrestee could provide identification. For example, individuals who are highly inebriated may need to be arrested for their own safety so they can recover in a safe place and not be susceptible to outdoor exposure and/or

¹ CVC 40302: Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases: (a) When the person arrested fails to present both his or her driver's license or other satisfactory evidence of his or her identity and an unobstructed view of his or her full face for examination; (b) When the person arrested refuses to give his or her written promise to appear in court.

victimization. There are cases of prostitution where arrest is part of a larger process to connect human trafficking victims with support services. However, there are cases such as the 58 battery custodial arrests where identification could have afforded the officers the ability to issue a simple citation.

Table 1: OPD 2018 Non-Required Custodial Arrests Top Categories

Statute Code	Description	Charge Count
PC647 (F)	DISORDERLY CONDUCT: ALCOHOL	203
PC647 (B)	DISORDERLY CONDUCT: PROSTITUTION	200
VC23152 (A)	DUI* ALCOHOL/DRUGS	158
PC166 (A)(4)	CONTEMPT OF COURT: DISOBEY COURT ORDER/ETC	101
PC653.22(A)	LOITER: INTENT: PROSTITUTION	89
PC242	BATTERY	58
PC 166(C)(1)	CONTEMPT OF COURT: VIOLATE PROTECTIVE ORDER/ETC	32

*DUI = driving a vehicle under the influence of alcohol or other intoxicant

Officers are not allowed to transport subjects to Santa Rita Jail alone. Each arrest requires hours of time of at least two officers and wastes significant time for the arrested individuals who need to return to Oakland or elsewhere upon release. Officers can more efficiently utilize patrol service time in the community. OPD would rather cite people for low-level crimes when appropriate, and allow individuals to not face the hassles and burdens of being temporarily removed from society and going to jail some 26 miles from Oakland. Individuals who could be cited for an infraction or misdemeanor but cannot provide ID will be saved the burden of transportation back to Oakland after the full arrest and booking process.

Additionally, the arrest can cause varying levels of stress for individuals and lead to escalations of anger, noncompliance, and even use of force. Furthermore, if an individual who must face custodial arrest has a vehicle at the arrest location, their vehicle may face parking fees and even towing – causing an additional burden.

By providing rapid ID when records exist, MIDs can mitigate these challenges as well as offer other benefits.

3. Locations Where, and Situations in which the MID System may be deployed or utilized.

Where - The technology would be provided to patrol officers throughout the five police areas of the City.

Situations - Any misdemeanor that does not require a custodial arrest by statute or circumstance (inebriation, crime likely to continue, etc.).

4. Impact

Public Privacy Impact

The privacy risks associated with MID are:

- 1) personnel could abuse the device to ascertain a person's identify when not justified; or
- 2) the person's data, associated with fingerprints, could be shared intentionally or unintentionally in ways that violate the person's right to privacy.

To address the first concern, OPD Department General Order (DGO) I-21 "MOBILE IDENTIFICATION DEVICES" explicitly requires that MID may only be used when the individual provides knowing and voluntary² consent (captured via Body-Worn Camera (BWC) video or on a signed consent form³, and one of the following circumstances exist:

1. Probable causes exists for the subject's arrest; or
2. The subject is to be cited for an infraction or misdemeanor and cannot provide satisfactory evidence of identity.

Furthermore, DGO I.21 C.2. "Use Procedure" explains that MIDs will be stored at Bureau of Field Operations Offices and that patrol officers must contact their supervising sergeant to request a MID for identification purposes.

In terms of a person's data being shared in ways that violate their expectation and / or right to privacy, the MID technology does not store any data – it only searches data that already exists. Fingerprint data is not transferred or stored from existing databases onto MDTs or other OPD data systems.

² In accordance with OPD Training Bulletin I-Q – *Consent Searches* (see Appendix A), officers seeking consent shall tell the subject that they have the right to refuse being identified via MID..

³ As of the effective date of this order, the form number is TF-2018 (see Appendix B).

5. Mitigations

MIDs are designed to not store data but to only access the fingerprint database shared between Alameda and Contra Costa County to compare the fingerprint itself. Since data is not retained by the MID or police computer, personally identifiable data cannot be shared inappropriately. DGO I-21 C.3 provides another layer of privacy impact mitigation – in the event that an officer uses the MID with a person’s voluntary consent, the officer will use personal a BWC to record the encounter and ensure an evidentiary record. As previously mentioned, the absence of a BWC will require a signed consent form (TF-2018).

6. Data Types and Sources

The MID is used to scan an individual’s fingerprint. The scan is connected via the MID, via Bluetooth to the in-car computer, with a fingerprint database maintained by ACSO and the Contra Costa Sheriff’s Office. The fingerprint images are scanned using algorithms to compare different points on the image of the fingerprint. This system can also connect to arrest records if the algorithm matching software sees a match between a MID-scanned fingerprint image and a fingerprint on file. In this case, the MID will access the arrest record and personal file number from the prior arrest with associated name on file. Alameda County Mobile ID devices use the CAL-ID Mobile WEB ID system to run fingerprint searches against the fingerprint database. MID users must log into the Mobile ID WEB ID systems to use the Mobile ID device and receive search results. The arrest record is not actually visible on the handheld MID, it merely lets one know the record exists. An officer would be required to use the personal file number to see the arrest record in CRIMS.

7. Data Security

ACSO’s Central Identification Bureau (CIB) manages Alameda County’s CAL-ID System infrastructure consisting of an infrastructure of CAL-ID systems, sub-systems and network. The main CAL-ID system is an Automated Fingerprint Identification System (AFIS). CAL-ID includes several supporting systems also referred to as ‘sub-systems’ that provide additional information and tools to law enforcement. Supporting systems include mugshot and mobile ID systems. Management includes all CAL-ID databases, equipment, system and equipment maintenance, equipment deployment, training and system access. All systems are Criminal Justice Information Service (CJIS)-compliant, meaning that ACSO maintains security controls aimed at ensuring only authorized individuals have access to the fingerprint information. Furthermore, this system is maintained behind a firewall and is housed separate from other ACSO systems and Alameda County internet and data systems.

All users must first complete the Mobile ID User Agreement and receive hands-on training. The agreement is signed by their supervisor and sent to ACSO’s CIB for final approval and user account access. When the user signs the Mobile

Identification User Agreement, they certify that they have received training, and will abide by all policies.

Any maintenance required of the MID will be done by ACSO staff, and requests will be directed to ACSO through the OPD Information Technology Unit.

8. Costs

ACSO will accept all costs to furnish OPD with MID technology. ACSO will also maintain responsibility for maintenance costs.

9. Third Party Dependence

ACSO will provide MID devices to OPD and will accept all costs to furnish OPD with MID devices. The MID devices themselves are made by Cogent (owned by 3M).

10. Alternatives Considered

The alternative to using MIDs for persons that cannot be identified in conditions outlined in DGO I-21.C.1 will be to continue to arrest people who otherwise would not need to be arrested and taken to jail in Dublin, CA for the purpose of identification. In these cases, people will continue to assume the burden of arrest and transport a long distance from Oakland, and police time will continue to be used ineffectively. OPD is not aware of another system for legally identifying persons without acceptable identification.

11. Track Record of Other Entities

MID devices are used by many California city police agencies and county sheriff departments. Cities include:

- Fresno;
- Los Angeles;
- San Francisco;
- San Jose;
- Modesto; and
- Pasadena;

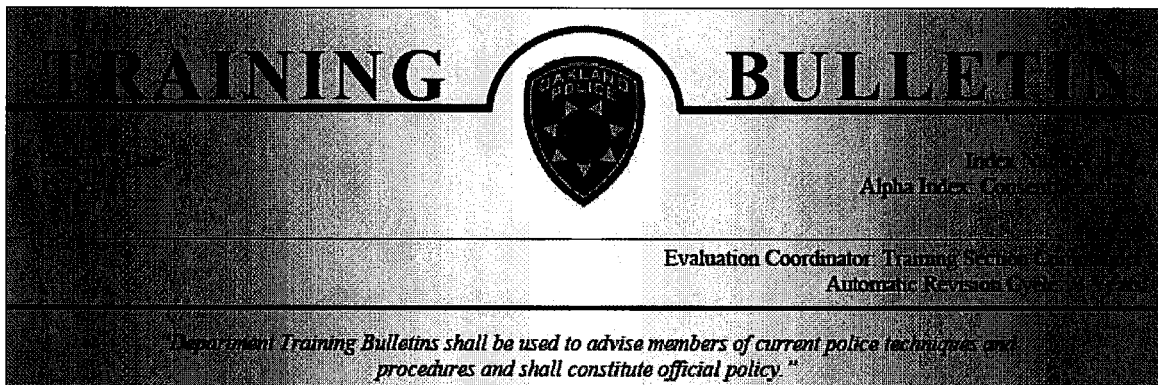
Counties include:

- Fresno;
- Kern;
- Los Angeles'

- Marin;
- Santa Clara;
- San Francisco; and
- Stanislaus

Several cities and counties are beginning to conduct MID studies. Other locations are using similar technologies. The Brentwood Police Department has installed BlueCheck mobile ID systems – a similar type of fingerprint reader, in some police vehicles. These handheld devices also match prints to files maintained by Contra Costa and Alameda counties. The San Jose Police Department, in partnership with Santa Clara County, is using BlueCheck, a mobile fingerprinting device from 3M Corporation. The L.A. County Sheriff's Office and several L.A. County police departments are also using BlueCheck devices for fingerprint ID. Several Alameda County police departments are using the Cogent 3M MIDs, including Berkeley, Hayward, and San Leandro.

Appendix A



CONSENT SEARCHES

Introduction

Law enforcement officers have a variety of methods available to enforce and prevent crime. One such method that is often overlooked is the consent search.

If an officer obtains valid consent, the officer may conduct a search without a warrant, probable cause, exigent circumstances, or parole/probation conditions.

With valid consent, the officer is entitled to seize contraband and the fruits or instrumentalities of a crime as well as any other item the officer reasonably believes will aid in a suspect's apprehension or conviction.

Consent to search not only applies to suspects, but also to victims who similarly retain a reasonable expectation of privacy.

When seeking consent to search, the officer must explicitly ask the suspect or victim for their consent and advise they have the right to refuse pursuant to DGO M-19.

Officers shall document in their respective reports that they explicitly asked the suspect/victim for consent, state whether consent was implied or expressed, and that they were advised they had the right to refuse consent.

In addition to explicitly asking a suspect or victim consent to search, consent will be valid if all of the following apply:

- The consent is voluntary and a product of the subject's free will.
- It is not coerced by force, threats, tricks, promises, or the exertion of an officer's authority.
- The person providing the consent has the authority or apparent authority to provide the consent.
- The search does not exceed the scope or limits of the consent given.

This Training Bulletin examines each of these criteria.



Consent Searches, Index Number I-Q

Consent is Voluntary

A person may give either express or implied consent.

Express consent is verbal consent given with words, such as “Yeah,” “Go ahead,” or “Do what you want.”

Implied consent is consent given through physical gestures or acts, such as pointing or waving.

Because a subject has the right to remain silent and refuse consent, silence in response to an officer’s request for consent does not constitute implied consent. (*Pavao v. Pagay* (9th Cir. 2002) 307 F3 915, 919)

Factors that may impair a subject’s decision making capability—such as medication, age, intoxication, and mental condition—are considered by the court, and the court may rule such factors make a subject’s consent unknowing and less than voluntary. A suspect’s consent, for example, was ruled involuntary when he was in critical condition and in pain in a hospital emergency room. (*George* (9th Cir. 1993) 987 F.2d 1428, 1431)

An Officer’s Display of Intimidating Conduct or Force can Affect the Validity of a Consent Search

By exhibiting force while seeking consent, an officer takes a risk that the consent will be ruled involuntary. The courts also consider whether weapons have been drawn. In order for consent to be valid, it must be uncontaminated by duress, intimidating conduct, or other pressure tactics, whether direct or indirect. (*People v. Challoner* (1982) 136 CA3 743,758)

An Officer’s Words can Affect the Validity of a Consent Search

The words an officer uses in seeking consent are often decisive in determining if consent is voluntary.

An officer must avoid commanding a subject to perform an act that permits the officer’s search or facilitates the officer’s access. Instead, an officer must ask the subject for permission to perform the search.

For example, an officer does not command a subject to “open the door.” Instead, the officer asks, “Would you mind opening the door?” An officer does not command a subject to “open a car trunk.” Instead, the officer asks, “Would you mind if I looked in the trunk?”

If a subject aids an officer in a search by obtaining evidence or by opening a door, trunk, or purse, it is more likely the consent will be ruled voluntary. An officer, however, must not command a person to perform these acts.

The court will ask if the officer made the subject feel he or she had a choice or if the officer made the subject feel he or she had to give consent. By asking for and receiving permission, the officer obtains a valuable indication that the subject’s consent was voluntary.

While not mandatory, an officer obtaining a subject’s written waiver of Fourth Amendment rights in order to establish consent can help show that the consent was voluntary.



An Officer's Misrepresentation can Affect the Validity of a Consent Search

An officer shall not misrepresent his/her identity or purpose for seeking consent. An officer may not misrepresent his/her authority by stating he/she has a warrant when he/she does not. (*Bumper v. North Carolina* (USSC 1968) 391 US 543, 550). Additionally, an officer may not state he/she wants to enter for one reason and then enter for another. (*US v. Harrison* (10C 2011) 639 F3 1273, 1280).

An undercover officer may legally misrepresent his/her identity and purpose for obtaining consent. This only applies when the undercover officer enters a residence for the purpose of buying or selling contraband or engages in other illegal conduct. (*U.S. v. Lopez* (USSC 1963) 373 US 427, 438)

The Person Providing the Consent has the Authority

A person may consent to the search of property he/she owns or occupies.

A joint or co-occupant of a premises may consent only to the search of his/her exclusively owned property, shared property, or common areas. Before searching questionable areas, an officer needs to ask if the person giving consent has free access to the object or area in question.

One spouse may consent to the search of the other spouse's property only if the spouse giving consent has joint access or joint control over that property AND the other spouse does not object. Officers do not have to seek consent from the other spouse and the objecting spouse must be on scene to object. (*Georgia v. Randolph* (USSC 2006) 547 US 103, 120)

Parents may consent to the search of areas or property that has not been "staked out" by a child as his/her own. For example, an officer may search a juvenile's room with parental consent if a parent cleans the room and the juvenile does not pay rent. However, a parent cannot give consent for an officer to search a juvenile's personal effects, such as a suitcase or toolbox, if the parent makes no claim or right of control over the object even if the object is in the parent's bedroom.

In some circumstances, a teenager may possess sufficient authority to allow an officer to enter and look about common areas. As children advance in age, they acquire greater discretion to admit visitors on their own authority. (*People v. Jacobs* (1987) 43 C3 472, 483)

An owner of property may give authorization to a third party to give consent to a search.

A host may consent to the search of a room where a non-paying guest is staying; however, the host does not have authority to consent to the search of the guest's personal property.

A property owner may not consent to the search of premises rented by a tenant.

A motel owner or employee may not consent to the search of a guest's room. Although motel employees may enter a rented room to clean, an officer may not send an employee in as the officer's agent to look for crime related evidence.

An employer or employee may consent to the search of areas and items, such as file cabinets, over which he/she has common authority or control.

A real estate agent may not consent to the entry of listed houses by persons whom the agent knows to be police officers looking for evidence.



Consent Searches, Index Number I-Q

Under the rule of “apparent authority,” courts will uphold a search as valid if an officer had a reasonable, good-faith belief, based on all the circumstances, that the consenter had the authority to give consent. (*U.S. v. Matlock* (USSC 1974) 415 US 164, 171)

If an officer has questions about authority, the officer must ask questions to determine whether the person giving consent shares the use of and has joint control over the area or object to be searched.

The Search Does Not Exceed the Scope of Consent Given

The places where an officer may search are limited entirely by the scope of the consent given.

It is the officer’s responsibility to ensure the consenter has given consent for the officer to search the areas where he/she is looking.

Consent to look for a person is not consent to look in a place where a person could not be located. Consent to search a house is not consent to answer the telephone. Consent to search a suitcase, however, includes consent to look inside the suitcase compartments and containers.

As long as an officer remains within the scope given, the officer may seize any crime related evidence in plain view.

Additional Information about Consent Searches

- Custody tends to show a suspect’s consent is not voluntary. However, custody alone does not necessarily destroy an otherwise valid consent search.

It is possible to get a valid consent from someone who is arrested and handcuffed.

- Miranda warnings are not required prior to requesting consent to search.

A voluntary consent may be obtained even after a person has asserted his/her Miranda right to remain silent or his/her right to an attorney.

- A subject may withdraw his/her consent at any time during a search.

When a subject withdraws consent, an officer must immediately stop the search.

Actions inconsistent with consent may act as withdrawal of consent. For example, if a suspect gives consent and then attempts to hamper or thwart the search, by throwing away a car’s keys, for example, the consent may be ruled involuntary.

- After formal charges have been filed against a suspect and an attorney has been appointed or retained, it is improper for an officer to conduct a search without also obtaining the consent of the suspect’s counsel or a search warrant. An officer shall not contact the suspect without first contacting the suspect’s attorney.
- All factors of consent are scrutinized at many different levels in the court system and, in some cases, by multiple judges.

The preferred method for an officer to document consent is on an audio/video device or in writing.

Appendix B

CONSENT TO SEARCH

搜查同意書

CONSENTIMIENTO DE BÚSQUEDA O REGISTRO

RD No.

街道號碼：

No. de RD _____

I consent to the search of:

我同意搜：

Otorgo mi consentimiento para la búsqueda o registro de:

(Describe Person, Vehicle, Premises, etc.)

(明個人、車輛、房宅等)

(Describe a la persona, vehículo, lugar, etc.)

I have been told that I have a right to refuse to allow the police to search my person or my property. I have given my consent voluntarily without threats or promises.

我已被告知有權拒絕警察搜查我個人或我的物業。我自願同意被搜查，沒有人威脅我或答應我任何事。

Se me ha comunicado que tengo el derecho de negar me a permitirle a la policía que realice una búsqueda o registro en mi persona o en mi propiedad. He otorgado mi consentimiento voluntariamente sin arrenazas ni promesas.

Witnessed By:

證人：

Atestiguado por

(Signature of Consenting Party) (同意人簽名)

(Firma de la parte que otorga su consentimiento)

Date/Time

日期/時間

Fecha/Hora
