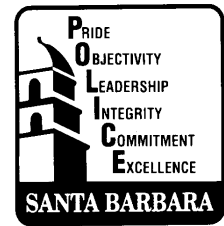




Training Bulletin

SANTA BARBARA POLICE DEPARTMENT



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5150 Mental Health Hold and Firearm Seizures

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Does it make a difference whether you call for CARES or transport to Cottage Hospital for a “5150 hold”?

Does it make a difference if a “5150 hold” is involuntary vs. voluntary?

The answer to both those questions is “Yes”.

If the hospital admission is voluntary it is **not** a true “5150 hold” so W&I 8102(a) gun forfeiture and W&I 8103 gun prohibition is not available or required.

To further compound the problem, Cottage Hospital is not a facility that is certified by the State to handle 5150 admissions which is a W&I 8103 Prohibition. The only facility in the County is PHF (Psychiatric Health-Facility).

Legal Scope:

5150 (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services.

Only an involuntary 5150 hold allows the seizure and prohibition of guns. Guns can be seized by consent, plain sight, exigent circumstances, or through a search warrant.

When a person is detained by law enforcement for a mental evaluation, it will usually trigger certain firearms prohibitions

Resources:

1. Santa Barbara Police Department Policy Manual **418** clearly outlines the procedures for Mental Illness Commitments.
2. Mental Health Assessment Team (M.H.A.T.) is now the Crisis and Recovery Emergency Services (C.A.R.E.S)
3. People under the age of 21 should be referred to Safe Alternatives For Treating Youth (S.A.F.T.Y)

Police Officer Guidelines regarding Mental Illness Commitments

418.1 PURPOSE AND SCOPE

This procedure describes an officer's duties when a person is to be committed to a mental health unit pursuant to Welfare and Institutions Code § 5150. The commitment of a person under § 5150 does not constitute an arrest.

418.2 AUTHORITY

Pursuant to Welfare and Institution Code § 5150 when any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, or other individual authorized by statute may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, or other individual authorized by statute has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, or other individual authorized by statute, such person shall be informed that they may be liable in a civil action for intentionally giving a statement which he or she knows to be false.

418.3 PSYCHIATRIC EMERGENCY TEAM

A mobile Mental Health Assessment Team (M.H.A.T.) is available around the clock to assist officers in evaluating mental health cases in the field, particularly if a 72-hour hold seems appropriate. If the Team is out of service at the time or the individual has an overriding medical problem, or if it is necessary to expedite the commitment, the officer may take the individual directly to Cottage Hospital Emergency and the Team will respond as soon as possible. After evaluation, the M.H.A.T. will do one of the following:

- (a) Write a §5150 WIC petition and initiate appropriate subsequent procedures thus permitting the officer to return to the field; or
- (b) Arrange for an alternative disposition when an appropriate diversion program is available; or
- (c) Conclude that the individual is not a candidate within §5150 WIC and so advise the officer. If the officer disagrees with this finding, he may request the duty Watch Commander to initiate a telephone call of appeal to a M.H.A.T. supervisor. The telephone number will be on file in the Watch Commander's office.

In the event that the individual is a juvenile or a person already in a hospital, the Psychiatric Health Assessment Team (P.H.A.T.) will do the evaluation.

418.4 FIREARMS IN POSSESSION OF MENTALLY ILL PERSONS

When a person is detained and ultimately released to the Mental Health Assessment Team for examination of their mental condition and is in possession of a firearm, it shall be booked for safekeeping. At the time the

weapon is confiscated the peace officer taking the weapon shall notify the person, from whom the weapon was seized, of the procedure for return of the weapon.

The peace officer will also provide a receipt and "Notice of Rights" and have the person read and sign the notice, if possible. If the person is violent or gravely disabled and unwilling to, or unable to sign, the officer shall complete the form and make note why the person was unable to sign. The officer shall give a copy of the notice to the detained person.

The original "Notice of Rights" form is retained by the officer, is attached to a copy of the police report and is forwarded to the District Attorney's office. The District Attorney's office has 30 days from the date of detention to initiate a petition in Superior Court to prevent the return of the weapon.

The District Attorney's office will notify the person by letter of their right to contest the forfeiture. If the person responds and requests a hearing, the court clerk will set a hearing date no later than 30 days after receipt of the request.

If the person does not respond within 30 days the District Attorney will file a petition for order of default, thereby forfeiting the weapon.

There will be cases where an officer has detained a person for examination of their mental condition, and the Mental Health Assessment Team does not take custody of the person. The same procedures apply: seize the weapons, make proper notification, complete the receipt and "Notice of Rights" form, write a report detailing the apprehension of the person and seizure of weapons and the Mental Health Team's conclusion, and then forward the report to the District Attorney for a petition.

When a person is taken into custody on criminal charges because of his mental condition the same procedures apply.

418.5 CONFISCATION OF FIREARMS AND OTHER WEAPONS

Whenever a person has been detained or apprehended for examination pursuant to Welfare and Institutions Code § 5150, the handling officer should seek to determine if the person owns or has access to any firearm or other deadly weapon. Any such firearm or other deadly weapon should be confiscated in a manner consistent with current search and seizure law (Welfare and Institutions Code § 8102(a)).

Officers are cautioned that a search warrant may be needed before entering a residence or other place to search unless lawful, warrantless entry has already been made (e.g., exigent circumstances, valid consent) (Penal Code § 1524).

For purposes of this section, deadly weapon means any weapon, the possession of which or carrying while concealed, is prohibited by Penal Code § 19100; 21310.

The officer taking custody of any firearm or other deadly weapon shall issue the individual possessing such weapon a receipt, fully describing the weapon (including any serial number) and indicating the location where the weapon may be recovered, along with any applicable time limit for recovery (Penal Code § 33800).

The handling officer shall further advise the person of the below described procedure described below for the return of any firearm or other deadly weapon which that has been confiscated (Welfare and Institutions Code §

8102(a)). For purposes of this section deadly weapon means any weapon that the possession of or carrying while concealed is prohibited by Penal Code § 19100; 21310.

418.6 TRANSPORTATION OF MENTALLY ILL PERSONS

An officer shall request an ambulance to transport mentally ill persons only If the person is: (a) Violent and requires restraint to the extent that he must be transported lying down. (b) Injured or physically ill and is in need of immediate medical attention.

418.7 ENTERING PSYCHIATRIC WARD - FIREARMS TO BE REMOVED

Before entering the psychiatric ward of the Hospital, an officer shall unload and secure his/her firearm in the trunk of the police vehicle.

418.8 TRAINING

As a part of advanced officer training programs, this agency will endeavor to include POST approved training on interaction with mentally disabled persons as provided by Penal Code §13515.2

Legal Scope:

Welfare and Institutions Sections

8100(a) WI: *A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to the prohibition in this subdivision after he or she is discharged from the facility.*

8102(a) WI, *Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in WI 8100 or 8103, is found to own, have in his or her possession or under his her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.*

Penal Code 1524

1524 (a) *A search warrant may be issued upon any of the following grounds:*

1524 (a) (10) *when the property or things to seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.*

What does all this mean?

Law Enforcement can get a search warrant to seize firearms from a person that has disclosed a serious threat of physical violence against a reasonably identifiable victim(s) or has been detained for an evaluation or committed to a mental health unit per 5150 and has access or in possession of a deadly weapon.

IMPORTANT NOTE: Officers have the authority to detain the subject for a reasonable duration of time that allows the procurement, execution, and seizure of firearms or a deadly weapon per the SW. If the subject refuses to submit to the detention, a violation of 148(a)(1) PC can be alleged.

One of the most important questions to ask any time that we respond to a 5150 call is if the person has possession or access to any deadly weapon.

If the subject has access to firearms or any deadly weapon follow the department policy by requesting CARES and confiscate the firearm or deadly weapon.

If a firearm or deadly weapon is confiscated it is extremely important to send the report to the Detectives so that the District Attorney can be notified to start the 30 day process to forfeit the weapon.

Attached is a copy of deadly weapon search warrant example.