

Mental Illness Commitments

419.1 PURPOSE AND SCOPE

This policy provides guidelines for when officers may take a person into custody for psychiatric evaluation and treatment (5150 commitment) (Welfare and Institutions Code § 5150).

419.2 POLICY

It is the policy of the Walnut Creek Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (5150 commitment) process.

419.2.1 ADMONISHMENT

In every case where a person is taken into custody under provisions of 5150 W&I, that person shall be given the detention advisement that is on the 5150 form. In cases where it is not possible to give the advisement, officers shall note the reason on the 5150 form.

419.2.2 WHAT MAY NOT CONSTITUTE A 5150

There are some persons who display aberrant or even schizophrenic behavior that clearly demonstrates a mental illness who are not a danger to themselves or others. Remember that 5150 W&I is not intended to transfer all mentally ill persons to a mental health evaluation and treatment facility. W&I 5150 should only be used for those who are a danger to themselves or others or who are gravely disabled. This does not include persons who are just intoxicated unless the officer concludes that the intoxication has induced a psychotic episode.

Any officer who is unsure of how to proceed on any 5150 matter should consult with a supervisor.

419.2.3 DESIGNATED MENTAL HEALTH EVALUATION AND TREATMENT FACILITIES

Contra Costa Regional Medical Center in Martinez is the facility to which 5150's are normally sent from Walnut Creek.

Alta Bates (Herrick) Medical Center in Berkeley is an Alameda County designated evaluation and treatment facility; by agreement with the mental health director of this county, they may accept patients directly from the Kaiser Walnut Creek Mental Health Clinic, providing such patients have been "5150'ed" by a police officer from the Kaiser Mental Health Clinic to Alta Bates Medical Center. Alta Bates (Herrick) may also be used when an officer has been called to the home of a Kaiser psychiatric outpatient by a visiting outpatient psychiatric nurse, who has called for an officer to 5150 the outpatient and has also arranged for Kaiser's ambulance to transport to Herrick.

The Pavilion at Mount Diablo Hospital is also a designated facility within our county. Patients may be taken there directly from the John Muir Medical facility or from Kaiser, provided arrangements have been made with the involved facilities. Again, the trained mental health professional's information may be used as probable cause for the 5150. Include the name of any consulting doctor.

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Occasionally there may be an exceptional situation where prior arrangement has been made for 5150 commitment of a hospital inpatient or outpatient to some other mental health screening facility. These arrangements should first be reviewed with Mental Health Crisis Service at Merrithew at (925)646-2800.

419.2.4 HOSPITAL EMERGENCY ROOMS

The county mental health director has designated emergency room physicians at both John Muir and Kaiser hospitals in Walnut Creek as authorized to "5150" patients in their respective emergency rooms. This authorization does not apply to persons not being treated in the emergency room.

419.2.5 OTHER HOSPITAL PATIENTS

Occasionally an officer may be called to a hospital on a request to "5150" a non-emergency room patient at that hospital. In such cases, the officer may rely upon information provided by the hospital staff or upon his or her own observations and/or interview of the patient. A 5150 should not be completed for a patient to be released on some future date. The evaluation should be made on the date of transfer to a mental health evaluation and treatment facility.

It is important that the reason for a 5150 be psychiatric crisis and not just uncooperative or behavioral problems. In the latter case, the hospital has the choice of discharging the patient or restraining the patient as determined by staff physicians. We will not help restrain patients who are not taken into custody under 5150 W&I or where some other legal foundation for our intervention is lacking.

419.3 AUTHORITY

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5585.50).

When determining whether to take a person into custody, officers are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person's mental disorder, which may include evidence presented from any of the following (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05):

- (a) An individual who is providing or has provided mental health treatment or related support services to the person
- (b) A family member
- (c) The person subject to the determination or anyone designated by the person

419.3.1 TRANSPORTATION

Transportation of 5150's is normally done by ambulance. AMR Ambulance is normally used except for Kaiser Hospital Mental Health Clinic patients sent to Alta Bates. In the latter case, Kaiser will provide its own ambulance service. The Walnut Creek Police Department does not pay for the

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transportation of 5150's. If an officer is required to transport a 5150, it will only be done in a patrol car with a prisoner cage and a second officer will follow to the destination as a cover unit for the transporting officer. In these instances, the individual shall be handcuffed consistent with the handcuffing policy.

419.3.3 MENTAL HEALTH DOCUMENTATION

The officer will complete an Application For 72-Hour Detention for Evaluation and Treatment form (MH-302) and provide it to the staff member assigned to that patient. The officer will retain a copy of the 72-hour evaluation for inclusion in the case report. The officer shall also provide a verbal summary to an emergency department staff member regarding the circumstances leading to the involuntary detention.

419.3.5 FORM DISTRIBUTION

The 5150 form is titled "Application for 72-hour Detention for Evaluation and Treatment." The facility where the person is being sent should be noted.

For persons sent to Merrithew Memorial (County) Hospital, all but the gold copy is sent with the patient to Merrithew. The gold copy is placed in the case jacket.

For persons sent to any mental health evaluation and treatment facility other than Merrithew, only the white copy is sent with the patient. The remaining copies are placed in the case jacket for later distribution.

419.4 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 § 12020.

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 § 12028.7).

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 § 12020.

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419.4.1 PETITION PROCESS OF CONFISCATED FIREARMS AND WEAPONS

- (a) All 5150/8102 W&I cases will be reviewed by the Investigations Bureau Crimes Against Persons Sergeant (hereafter referred to as Detective Sergeant) to assess weapon use and risk factors associated with the return of the weapon.
- (b) The Detective Sergeant will review the case for any other legal issues, which may also preclude the return of the weapon.
- (c) If no petition is filed within 30-days after the individual is released, or within the period of time authorized by the court, the weapon(s) shall be made available for return (See section J for further information).
 - 1. Weapon(s) may only be retained under legal authority other than 8102 W&I.
 - 2. If petition is not filed within the time frame, regardless of circumstances, there is no remedy to retain the weapon(s) if the circumstances, there is no remedy to retain the weapon(s) if the detainee demands their return.
- (d) If the Detective Sergeant decides to file a petition for confiscation, the City Attorney will be notified and he/she will prepare all of the necessary legal documents. The Evidence Room staff shall also be notified that a petition is being filed and that no weapons should be released absent authorization from the City Attorney's Office.
- (e) The petition is prepared via the City Attorney, citing the elements of the incident case as well as any additional incidents, background, etc., which establishes the endangering of the detainee or other persons. The City Attorney will need a copy of the report and the detainee's status. If the detainee has been released, the City Attorney needs the date of release. The investigating officer will also sign the declaration prepared by the City Attorney that accompanies the petition. As detention under 5150 W&I is a civil commitment, the District Attorney will not normally become involved in petition or hearing process.
- (f) The petition shall be filed by mail or in person via the Contra Costa County Clerk, Civil Section, within 30-days of the detainee's release by the City Attorney. Upon good cause, the City Attorney may request the court grant an extension of time to file the petition; however, this request for an extension must be filed within 60-days of the release of the individual from the health facility.
- (g) After the petition is filed with the Court, the City Attorney's Office shall notify the detainee that a petition is being/has been filed and that the detainee has thirty days to respond to the County Clerk. The City Attorney's Office will do the following:
 - 1. Notification shall be by certified, as well as first class mail, using the address given by the detainee at the time of the incident or his/her last known address.
 - 2. Notification shall include department form letter, a copy of the Petition Seeking Judicial Determination Re: Return of Firearm or Deadly Weapon, Declaration

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- in Support of the Petition, and Certificate of Service by Mail. a. The letter shall provide the date on which petition was filed as well as the address and phone number to be contacted by the detainee when he/she responds to the clerk. b. Agencies may utilize petition, declaration, and certification forms as prepared by District Attorney or forms designed by the individual city attorney.
3. Notification must be mailed no later than the same day the petition is prepared. Note: Presiding judge of the superior court recommends that five additional days be added on to the 30 days to allow for mail delay as prescribed by the California Civil Code.
 4. The Detective Sergeant shall continue to monitor the process by maintaining a tickler file for each case.
- (h) Detainee does respond and requests hearing:
1. The County Clerk sets a hearing date no later than thirty days from receipt of request.
 2. The County Clerk is required to notify the detainee, the City Attorney, and the District Attorney of hearing date and location.
 3. All cases will be heard by the Superior Court of California, County of Contra Costa, Martinez, at the time prescribed by the court.
 4. The City Attorney and/or the involved police personnel shall appear at the hearing to show cause why the weapons should not be returned to detainee.
 5. Final disposition for the weapon(s) will be at the discretion of the presiding judge.
- (i) Detainee fails to respond to County Clerk within 30 calendar days.
1. The Police Department determines that response deadline has been reached and verifies with County Clerk that no response has been received from detainee.
 2. The City Attorney is notified and requested to prepare a request for entry of default judgment with the court.
 3. The Request for Entry of Default is filed with County Clerk by the City Attorney's office.
 4. The presiding judge will rule on order of default. Final disposition of weapons will be based on this order.
- (j) Section 12021.3 of the Penal Code requires anyone who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned to him/her, apply to the Department of Justice (DOJ) for its return. Therefore, the individual seeking the return of the firearm must complete

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and submit to the DOJ, law enforcement Gun Release Application. This application is available online at www.ag.ca.gov/firearms or by calling (916) 263-4887.

419.4.2 418.5.1 RETURN OF CONFISCATED FIREARMS AND WEAPONS

- (a) Whenever the handling officer has cause to believe that the future return of any confiscated weapon(s) might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the Detective Bureau which shall be responsible for initiating a petition to the superior court for a hearing in accordance with Welfare and Institutions Code § 8102(b), to determine whether or not the weapon(s) will be returned.
- (b) The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon(s) have been confiscated unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him or her of the right to a hearing on the issue and that he or she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon(s).
- (c) If no petition is initiated within the above period, the Department shall make the weapon(s) available for return in accordance with subsection (d) below. If the person does not confirm a desire for a hearing within the prescribed 30 days, the Department may file a petition for an order of default.
- (d) Under no circumstances shall any firearm be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice which conforms to the provisions of Penal Code § 33865.
- (e) In no case in which a firearm or other deadly weapon is not retained as evidence shall the Department be required to retain such firearms or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm or other deadly weapon is available for return. At the expiration of such period, the firearm or other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 33875).

419.5 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 § 13515.25.

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419.6 DOCUMENTATION

The officer shall complete an application for a 72-Hour detention for evaluation and treatment, provide it to the facility staff member assigned to that patient and retain a copy of the application for inclusion in the case report.

The application shall include the circumstances for officer involvement; the probable cause to believe the person is, as a result of a mental health disorder, a danger to others or him/herself or gravely disabled; and all information used for the determination of probable cause (Welfare and Institutions Code § 5150; Welfare and Institutions Code § 5150.05).

The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the involuntary detention.

419.6.1 ADVISEMENT

The officer taking a person into custody for evaluation shall advise the person of:

- (a) The officer's name and agency.
- (b) The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals and the mental health staff will advise him/her of their rights.
- (c) The name of the facility to which the person is being taken.
- (d) If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items, which the officer must approve, and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (Welfare and Institutions Code § 5150).

419.7 CRIMINAL OFFENSES

Officers investigating an individual who is suspected of committing a minor criminal offense and who is being taken on a 5150 commitment should resolve the criminal matter by issuing a warning or a Notice to Appear as appropriate.

When an individual who may qualify for a 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

- (a) Arrest the individual when there is probable cause to do so.
- (b) Notify the appropriate supervisor of the facts supporting the arrest and the facts that would support the 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

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In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this department to regain custody of the individual, department resources (e.g., posting a guard) and other relevant factors in making this decision.

419.8 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for a 5150 commitment, the handling officers should seek to determine if the person owns or has access to any firearm or other deadly weapon defined in Welfare and Institute § 8100. Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g. safekeeping, evidence, consent).

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, consent). A search warrant may also be needed before searching for or seizing weapons

The handling officers shall issue a receipt describing the deadly weapon or any firearm seized, and list any serial number or other identification that is on the firearm. Officers shall advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody (Welfare and Institutions Code § 8102 (b)) (see Property and Evidence Policy).

419.8.1 PETITION FOR RETURN OF FIREARMS AND OTHER WEAPONS

Whenever the handling officer has cause to believe that the future return of any confiscated weapon might endanger the person or others, the officer shall detail those facts and circumstances in a report. The report shall be forwarded to the Detective Bureau, which shall be responsible for initiating a petition to the Superior Court for a hearing in accordance with Welfare and Institutions Code § 8102(c), to determine whether the weapon will be returned.

The petition to the Superior Court shall be initiated within 30 days of the release of the individual from whom such weapon has been confiscated, unless the Department makes an ex parte application to the court to extend the time to file such a petition, up to a maximum of 60 days. At the time any such petition is initiated, the Department shall send written notice to the individual informing him/her of the right to a hearing on the issue, that he/she has 30 days to confirm with the court clerk any desire for a hearing and that the failure to do so will result in the forfeiture of any confiscated weapon.

419.9 TRAINING

This department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.