

**TRAINING PACKET FOR INVOLUNTARY
PSYCHIATRIC DETAINMENT UNDER
*WELFARE AND INSTITUTIONS CODES 5150***



MARCH, 2014

BEHAVIORAL HEALTH SERVICES

Training Packet for Involuntary Psychiatric Detainment under *Welfare and Institutions Code §5150*

This training packet is the result of the combined efforts of many people who work for the County of San Diego and its partners.

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SECTION 1

“5150”: DEFINITION AND SCOPE

The term “5150” is used, for our purposes, in reference to California’s *Welfare and Institutions Code* §5150 (hereinafter referred to as §5150). This is the particular statute that describes the circumstances and requirements necessary for one person to detain and transport or cause the detention and transportation of another person to a particularly designated facility.

Welfare and Institutions Code §5150 states:

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, member of attending staff, as defined by regulation, of an evaluation facility designed by the County, designated members of a mobile crisis team or other professional person designated by the County 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 Health Care Services as a facility for 72-hour treatment and evaluation.

ACTIONS AUTHORIZED BY §5150 DESIGNATION

§5150 designation only empowers the designee to detain and transport or cause the detention and transport of a person meeting certain criteria to an LPS-designated facility to determine whether further mental health evaluation and treatment is necessary.

§5150 designation does not empower the designee to directly admit a person to an LPS-designated facility for mental health treatment.

The §5150 form (MH-302) (See Attachment A) is entitled “Application for 72-Hour Detention for Evaluation and Treatment.” §5150 designation empowers the designee to present this application and the subject of the application to a facility where evaluation and treatment can occur. The document is often, erroneously referred to as a “72-Hour Hold.” It is not. Filling out the form does not cause involuntary hospitalization. It is a request for a designated facility to assess the subject of the §5150 and to determine if involuntary admission for mental health evaluation and treatment is necessary.

SECTION 2

OBTAINING §5150 DESIGNATION

In San Diego County, any person, other than a sworn peace officer, must satisfy the following two requirements in order to be authorized to detain and transport or cause the detention and transport of another pursuant to *Welfare and Institutions Code* §5150.

1. QUALIFICATION BY PROFESSION

Sworn peace officers are the **only** group authorized to perform the duties described in §5150 independent of any action by the County. Any person who meets the *California Penal Code*'s definitions and requirements necessary to be identified as a sworn peace officer is also authorized to act pursuant to §5150.

Welfare and Institutions Code §5008(i) defines a peace officer as "... a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of the *Penal Code* who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the *Penal Code* when acting in relation to cases for which her or she has a legally mandated responsibility."

All physicians, including psychiatrists and emergency department physicians, attending staff, and other professional persons must be specifically designated by the County before they can detain and transfer or cause another to be detained and transferred pursuant to §5150. Membership on attending staff is as defined by regulation.

The phrase "attending staff as defined by regulation" is a reference to *California Code of Regulations* (CCR), Title 9, §823.

"Attending staff" under section 5150 of the Act means any person having responsibility for the care and treatment of the patient, as designated by the Local Mental Health Director, on the staff of an evaluation facility designated by the county. (CCR Title 9 §823).

By Resolution dated December 5, 2005 (Attachment B), the San Diego County Board of Supervisors has declared the following professional persons eligible for designation:

Physicians in the performance of their duties as a member of the attending staff of an LPS-designated facility.

Psychiatric residents in an LPS-designated facility where the facility Director has extended them eligibility to apply for designation at that facility.

Emergency department physicians credentialed by or under contract to serve in the emergency departments of licensed general acute care hospitals.

Licensed psychologists, Licensed Clinical Social Workers, Registered Nurses, and Licensed Marriage and Family Therapists in the performance of their duties as a member of the attending staff of an LPS-designated facility.

Licensed Clinicians in the performance of their duties as a member of a “mobile crisis team: operated by an LPS designated facility.”

Licensed clinicians in the performance of their duties as a member of a Psychiatric Emergency Response Teams (PERT).

Licensed County Mental Health Services staff in the performance of their duties as a member of a designated Juvenile Forensics treatment team out-stationed at Polinsky Children’s Center (PCC).

Licensed County employees in the performance of their duties as a member of the Senior Outreach Team of County Aging and Independence Services.

2. QUALIFICATION BY TEST GRADE AND APPROVAL

Persons meeting one of the above professional descriptions must then have reviewed this training packet, passed the exam with 85% correct answers, and applied to and received approval for designation from the Local Mental Health Director or his or her designee.

Professional persons granted §5150 designation are only authorized to exercise this authority in the performance of their job duties at a specific site.

Professional persons employed by more than one program or site must obtain separate §5150 designation for each program or site.

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SECTION 3

THE ELEMENTS OF A VALID §5150

Probable Cause

Peace officers and §5150 designated professional persons must make a face-to-face evaluation of an individual as part of the overall determination as to whether that individual meets §5150 criteria. The §5150 designated person must have probable cause to believe that, as the result of a mental disorder, the subject is a danger to self and/or others, and/or gravely disabled.

In *People v. Triplett* (1983) 144 Cal. App.3d 283, the California Court of Appeals formulated the now standard interpretation of probable cause in the context of a §5150.

To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion. 144 Cal.App.3d at 287-288 (citations omitted).

In other words, the §5150 designee must be able to identify specific information that would cause any reasonable person to believe or strongly suspect that the subject of the §5150 has a mental disorder which, at present, results in behavior indicating dangerousness to self, and/or others, and/or grave disability.

The specific information considered in the §5150 process is not limited to the direct observation of the designated person. It is not necessary that the designated person have independent firsthand knowledge of information offered by third parties.

Information relied upon may be that made available by other persons, including the person being considered for §5150, someone they designate, caregivers, and family.

When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to §5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder. (WIC §5150.05(a))

Mental disorder

Persons may be detained and transported pursuant to a §5150 upon probable cause that the person has a mental disorder which currently results in behavior that is dangerous to self and/or others, and/or constitutes grave disability.

The designee is not required to make a medical diagnosis of the mental disorder. The term “mental disorder” is not defined in the *Welfare and Institutions Code*. The statutory language of *Welfare and Institutions Code* §5150, and the State created form used are the same whether the §5150 is written by law enforcement or a clinician. The §5150 is a mechanism to present a person to the appropriate venue where clinical activities such as diagnosis, examination, treatment and evaluation can occur.

For purposes of the §5150, the mental disorder is established by statements that “articulate behavioral symptoms of mental disorder either temporary or prolonged.” (People v. Triplett)

The designee would look for and document words, actions and/or emotional affect that are inappropriate, unusual or bizarre for the circumstances to support probable cause to believe the person may have a mental disorder.

A history of a mental disorder alone is not sufficient to establish a connection between condition and behavior. A person with a mental disorder may find they are unable to provide for food, clothing and shelter for reasons unrelated to their mental disorder, such as the loss of a job, or a recent divorce. Similarly, dangerousness to self or others or an inability to provide food, clothing and shelter without a mental disorder is not enough. Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder. (WIC §5585.25)

Criteria

There are three separate criteria available as the basis for detention and transport pursuant to §5150: danger to self, danger to others, and gravely disabled. The designee must find that the subject of the §5150 meets at least one of the three.

In determining criteria, a connection must be established between the information supporting existence of a mental disorder and the indications or evidence of dangerousness to self and/or others and/or grave disability as a result of the mental disorder. The documentation presented on the §5150 form must establish this connection and support the criteria selected.

Danger to Self

What constitutes a “danger to self” is not defined. Thus, there is no legal requirement for “intent” in order to find probable cause that a person is a danger to himself or herself as a result of a mental disorder.

Some examples of what might constitute a danger to self as a result of a mental disorder may include, but are not limited to:

1. Intentional acts of self-harm
2. Statements of intent or plan for self-harm
3. Behaviors that place a person in harms way
4. Symptoms that increase the likelihood of dangerousness
5. In some circumstances, refusal of medical treatment or care due to a mental disorder (however, involuntary detentions under LPS may not be used to authorize non-psychiatric medical treatment)

Danger to Others

What constitutes a “danger to others” is not defined. Thus, there is no legal requirement for “intent” in order to find probable cause that a person is a danger to others as a result of a mental disorder.

Some examples of what might constitute a danger to others as a result of a mental disorder may include, but are not limited to:

1. Intentional acts of harm to others
2. Statements of intent or plan for harm to others
3. Behaviors that are dangerous to others
4. Symptoms that create the likelihood of dangerousness

Probable cause to believe that a person is dangerous to others as a result of a mental disorder may be based on actions that are likely to cause harm to another. As with dangerousness to self, it is not necessary that the person have actually caused harm to another person.

A history of violence towards others may be considered in determining dangerousness. The more recent the dangerous behavior, the greater the consideration given. And, again, there must be a connection between the dangerousness and a mental disorder.

Dangerousness or threats towards property alone does not necessarily equate to dangerousness.

Probable cause for dangerousness may be based on the combination of several behaviors and factors that the designee believes are the result of a mental disorder.

Gravely Disabled

Welfare and Institutions Code §5008(h)(1) (A) defines the term “gravely disabled” as a condition in which a person is unable to provide for his or her basic personal needs for food, clothing, or shelter as a result of a mental disorder.

A person is not gravely disabled if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.

A gravely disabled minor is a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter even though provided to the minor by others. (WIC §5008(l))

The term “gravely disabled” does not include mentally retarded persons by reason of being mentally retarded alone. (WIC §5008 (h))

In making a determination of grave disability, it is not necessary that a person be unable to provide for all of the three basic needs, i.e. food, clothing or shelter. Inability to provide for one of the three basic needs, as the result of a mental disorder, is sufficient.

Note that probable cause for grave disability may never be based solely on refusal to accept mental health treatment.

The LPS Act conspicuously does not state that persons are gravely disabled solely because they refuse treatment for a mental illness. In short, the structure of the LPS Act preserves the right of non-dangerous persons to refuse treatment as long as they can provide for their basic

needs, even if they have been diagnosed as mentally ill.(Conservatorship of Walker, (1987) 196 Cal.App.3d 1082).

The examples below may be helpful guidelines in determining grave disability:

FOOD	Adequate knowledge of nutritional needs. Appears adequately nourished. Able to explain the manner by which he/she obtains food—prepares own meals or prepared by third party.	Unable to distinguish between food and non-food items. No food available or food is spoiled. Appears inadequately nourished. Denies/ unaware of need for food. Unable to explain how he/she obtains food.
CLOTHING	Manner of dress is appropriate to season, temperature, physical limitations, culture and/or religion.	Public nudity or inadvertent exhibitionism. Uses non clothing items to cloth self. Destroying, giving away or discarding clothing without recall of or reason for doing so and/or resulting in inability to clothe self appropriately
SHELTER	Able to describe current shelter situation and /or plan for safely utilizing, maintaining or obtaining shelter. If evicted, eviction is not due to behavior which indicates an inability to utilize shelter properly. If chronically homeless, aware of shelter options, or able to describe how shelter needs are met.	Repeatedly unable to properly utilize resources for shelter. Refusal to utilize available housing due to unsubstantiated concerns/fears: i.e.—someone tampering with electricity, FBI, CIA wiretaps, etc. Inability to formulate plan for shelter is not due to developmental, cultural or social factors. Maintains household in a manner that is clearly dangerous to health and safety. (Filth, fire hazard, etc.)

Advisement

The designated person is required to inform the subject of the §5150 that he/she is being detained and transported for an examination by mental health professionals. *Welfare and Institutions Code §5157 (a)* requires that “[e]ach person, at the time he or she is first taken into custody under provisions of §5150, shall be provided, by the person who takes such other person into custody, the following information orally: “The ‘following information’ is the same as the ‘Detainment Advisement’ on the front upper right corner of the ‘Application For 72-Hour Detention For Evaluation and Treatment’ or “§5150 form.”

Welfare and Institutions Code §5157(b) requires that, for each person evaluated, the designated facility shall keep a record of whether the advisement was completed, good cause for the incomplete advisement, the name and title of the person completing the advisement and the date advisement was completed. If the `advisement was not completed, the facility must either provide the information set forth in §5157(a) or include documentation of good cause for the incomplete advisement in the patient’s medical record.

These requirements are generally satisfied by the §5150 designated person entering the appropriate documentation on the §5150 form.

*Note that the advisement requirements of §5157(a) and (b) are **not** satisfied by use of a facility’s “Involuntary Patient Advisement” form.

The “Involuntary Patient Advisement” form contains the information that must be given to “[e]ach person admitted to a designated facility for 72-hour evaluation and treatment ... by admission staff at the evaluation unit.” (WIC §5157(c)).

As with the “Detainment Advisement,” the fact that this advisement was given, the date and by whom or good cause for an incomplete advisement at the time of admission must be documented and kept with the patient’s record. The admission advisement process must be continued on the ward until completed. (WIC §5157(d))

Safeguarding of Property

When exercising their authority pursuant to §5150, a sworn peace officer or designated professional person has a responsibility to safeguard the personal property of the person detained.

This responsibility arises “[a]t the time a person is taken into custody for evaluation, or within a reasonable time thereafter.” The person effecting detention and transport pursuant to §5150 must “take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person.” (WIC §5156)

The duties required include ensuring that a report is made that describes the property preserved and safeguarded and the disposition of the property.

A responsible relative, the guardian or conservator of the detained person may agree to safeguard the personal property. The report of the property is then limited to the name of the party in possession of the personal property and the location of the property.

This arrangement is not available when the responsible relative has filed a petition for mental health evaluation regarding the subject of the §5150.

In San Diego County, by specific arrangement, some of these duties may be attended to by the “Sheriff’s Property Investigators.”

SECTION 4

PRESENTATION TO A DESIGNATED FACILITY

Designated Facility vs. Non Designated Facility

- The designated person is required to place the person in custody “in a facility designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation.”(Frequently referred to as “LPS facilities”).
- If a person has been placed on a §5150 and has been detained and transported to a facility that is not designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation (a non-LPS facility), the §5150 process has not been completed. Individuals brought to a non-LPS facility on a 5150 should still be assessed and transferred to an appropriate facility, as necessary. EMTALA obligations still apply. Hospitals may want to take advantage of Health and Safety Code 1799.111 to provide immunity for detaining the patient while a transfer is being arranged.
 - If that same person is admitted to that non-LPS facility for medical treatment (not psychiatric treatment), that person is no longer on a §5150. The designated person who wrote the §5150 may want to document why the §5150 process was not completed. The non-LPS facility does not have the ability to detain the person for care.
- If a person has been placed on a §5150 and has been detained and transported to a non-LPS facility, and is NOT admitted to that non-LPS facility, and is then subsequently transported to an LPS facility, the §5150 process has been completed.

The Written Application

At the time the sworn peace officer or authorized professional person presents a person to a designated facility pursuant to §5150, they must also present a written application to the facility stating:

- The circumstances under which the person’s condition was called to the attention of the sworn peace officer or authorized professional person; and
- That there is 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.”

The written application requirement of §5150 is satisfied by use of the State-developed “Application for 72-Hour Detention for Treatment and Evaluation.” The information requested and the form used are the same, whether completed by a peace officer or a §5150 designated professional person.

A peace officer or authorized professional person completes the §5150 process by presenting both the detained person **and** the written “Application for 72-Hour Detention for Treatment and Evaluation” to the designated facility.

When transferring a patient from one facility to another, there is no **legal** requirement that the **original** 5150 document be sent with the patient to the receiving facility.

Completion of Transport and Delivery

Prohibited Activities by Employees of Facilities

Mental health personnel cannot instruct a peace officer to take a person to jail or keep a person at jail solely because of the unavailability of an acute bed, nor can mental health personnel forbid a peace officer from transporting a person directly to an LPS-designated facility. (WIC §5150.1)

Mental health personnel cannot prevent a peace officer, who is performing duties under §5150, from entering an LPS-designated facility with the person to be assessed. (WIC §5150.1)

No employee of an LPS-designated facility can require a peace officer to remove the person without assessment as a condition of allowing the peace officer to depart. (WIC §5150.1)

A peace officer cannot be detained at the LPS-designated facility any longer than the time necessary to complete documentation of the factual basis of the §5150 detention and a safe and orderly transfer of physical custody of the person. (WIC §5150.2)

Procedures and Guidelines with Local Law Enforcement Agencies Relating to the Safe and Orderly Transfer of Physical Custody of Persons under §5150, Including Those who Have a Criminal Detention Pending

[Consider adding something relating to local policy and relationships between law enforcement and hospitals. Reference §5150.2]

Disposition Procedures and Guidelines with Local Law Enforcement Agencies for Persons not Admitted for Evaluation and Treatment and who Decline Alternative Mental Health Services

[Consider adding something relating to local policy and relationships between law enforcement and hospitals. Reference §5150.2]

SECTION 5

ASSESSMENT

Individual Assessments Prior to Admission to Determine Appropriateness of Detention

Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to §5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention. (WIC §5150)

Professional Person in Charge of the Facility or His or Her Designee

California Code of Regulations, Title 9, §822, requires that the professional person in charge of the facility be a psychiatrist, psychologist, licensed clinical social worker, Marriage, Family and Child Counselor or Nurse who meets certain minimum professional requirements and is “designated by the governing board of the facility” to be the person “clinically in charge of the facility.”

There are no “minimum professional requirements” described for the “designee”. “It is intended that these minimum qualifications shall apply to the head or chief of a particular service or professional discipline but not necessarily to subordinate employees of the same profession.” (CCR Title 9, §622)

The purpose of the assessment is to determine whether the person: meets criteria for involuntary admission on a 72 hour hold; meets criteria for voluntary admission; or can be appropriately served on an outpatient basis.

Involuntary Admission

If it is determined by the professional person in charge of the facility or his or her designee that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled, the facility may admit the person, and may detain the person for evaluation and treatment for a period not to exceed 72 hours.

Patients who are involuntarily admitted to a psychiatric facility have a right to: refuse medication in non-emergency cases; refuse medical treatment; refuse to participate in group therapy.

Voluntary Admission

Before admission to an LPS-designated facility, a patient meeting 5150 criteria must first be offered voluntary admission and refuse, prior to being placed on a psychiatric hold. If it is determined that the person can be properly served without being involuntarily detained, the person shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis. (WIC § 5151)

Patients who are voluntarily admitted to a psychiatric facility have a right to: discharge themselves when they desire; refuse medication in non-emergency cases; refuse medical treatment; refuse to participate in group therapy.

Patients who are voluntarily admitted to a psychiatric facility may later be placed on an involuntary hold, if they later refuse to stay on a voluntary basis, and if they are a danger to self, a danger to others, or gravely disabled.

Not Admitted/Referred for Alternative Services

If a person is brought to an LPS-designated facility is found to be in need of mental health services, but is not admitted to the facility, alternative services shall be offered. (§5150.3)

Evaluation as Soon as Possible After Admission

Each person admitted to an LPS-designated facility for 72-hour treatment and evaluation shall receive an evaluation as soon as possible after her or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held. (WIC § 5152)

Length of Detention

In San Diego County, the start of the 72-hour hold period of a person admitted pursuant to §5150 is the time that the person was initially detained pursuant to §5150. The 72-hour period includes Saturdays, Sundays and holidays.

If the LPS-designated facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours.

A patient may not be placed on more than one 5150 during a single admission.

Release or Other Disposition

A person admitted to an LPS facility pursuant to §5152 can be released before the end of the 72-hour hold if:

1. The treating psychiatrist, based on personal observations, believes that the detained person no longer needs evaluation or treatment; or
2. Either a psychiatrist or psychologist believes the detained person no longer needs evaluation or treatment, so long as both the psychiatrist and the psychologist have each personally evaluated the detained person and are in a collaborative treatment relationship, and have consulted with one another.
3. If the psychiatrist and psychologist disagree regarding the early release of the detained person, the hold shall be maintained unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. (WIC §5152)

SECTION 6

HEALTH AND SAFETY CODE §1799.111 DETENTION FOR UP TO 24 HOURS

This is a code section that can only be used by non-LPS facilities and for a short duration for LPS-like detentions.

California Health and Safety Code (HSC) §1799.111 provides immunity from civil or criminal liability to non LPS-designated hospitals, licensed professional staff of non-LPS designated hospitals, and to any physician and surgeon, providing emergency medical services in any department at the non-LPS designated hospital for detaining a person who is subject to detention pursuant to §5150. The purpose of this law is to allow a non-LPS designated facility to arrange for appropriate discharge and referral of a person who they would otherwise admit pursuant to §5150 criteria if the hospital were LPS designated.

The statutory immunity afforded under *Health and Safety Code* §1799.111 is available “if all of the following conditions exist during the detention:”

The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled.

The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

There is probable cause for the detention.

The person is not detained beyond 24 hours.

If the person is detained more than eight hours, but less than twenty-four (24) hours, all of the following additional conditions must be met:

A transfer for appropriate mental health treatment for the person has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.

In the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges or professional responsibilities the person, as a result of a mental disorder, is still a danger to himself or herself, or others, or is gravely disabled.

If the patient detained up to 24 hours is subsequently released from the non-LPS designated facility, the parties named above would be able to claim immunity if :

The person has not been admitted to a licensed general acute care hospital or a licensed acute psychiatric hospital for evaluation and treatment pursuant to §5150 of the *Welfare and Institutions Code*.

The patient's release from the non-LPS designated hospital is authorized by a physician and surgeon or a clinical psychologist with medical staff privileges or professional responsibilities who determines, based on a *face-to-face examination* of the person detained, that the person does not present a danger to self or others and is not gravely disabled.

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SECTION 7

§5150 IMMUNITY

Liability for decisions made in the exercise of authority pursuant to §5150 is of paramount concern to peace officers and professional persons. Various provisions of California law address immunity with regard to mental health treatment.

Release Following Admission Pursuant to a 72-hour Hold

So long as the provisions of WIC 5152 have been met (either the psychiatrist, the psychiatrist and psychologist or (where there is disagreement between the two) the facility's medical director believes evaluation or treatment are no longer needed), there is no civil or criminal liability for any action by a person released before the end of the 72-hour hold, or at the end of the 72-hour hold.

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SECTION 8

FIREARMS AND OTHER WEAPONS

A person placed on a §5150 as a danger to self or others, assessed and admitted to an LPS-designated facility as a danger to self or others (but not gravely disabled) is prohibited from owning, possessing, controlling, receiving, or purchasing, or attempting to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. (WIC §8103(f)(1))

A person who is further certified under 5250 (14-day hold), 5260 (second 14-day hold for imminent danger to self), for any of the criteria (danger to self or others, gravely disabled), or 5270.15 (30-day hold) is prohibited from owning, possessing, controlling, receiving, or purchasing, or attempting to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. (WIC §8103(g)(1))

Federal law provides for a lifetime firearms prohibition for persons who have been “adjudicated as a mental defective.” (27 CFR 178.32(a)(4)). The Department of Justice interprets this to apply to persons who have lost their certification review hearing.

On the date of admission, the facility must make a report including the person’s identity, the grounds for admission - danger to self and/or danger to others, and other requested information to the Department of Justice using a Department of Justice prescribed form.

Prior to, or concurrent with the discharge, the facility must inform the person that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years.

The facility is also required to inform the person that he or she may request a hearing from the Superior Court for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility must provide the person with a Department of Justice approved form to request a hearing.

If the person requests a hearing at the time of discharge, the facility must forward the form to the Superior Court unless the person states that he or she will submit the form to the Superior Court.

The facility is also required to notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated.

If the appropriate box is checked on the §5150 form, the facility must also notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm.

SECTION 9

MINORS

When detaining a minor, Welfare and Institutions Code §5585.50 is used instead of §5150:

When any minor, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of attending staff, as defined by regulation, of an evaluation facility designed by the County, designated members of a mobile crisis team or other professional person designated by the County may, upon probable cause, take, or cause to be taken, the minor into custody and place him or her in a facility designated by the County and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation of minors.

The Written Application

When presenting a minor to a designated facility, the “written application” completed and provided to the designated facility is the same “5150 form” as that used with adults.

Danger to Others, Danger to Self, Grave Disability

Dangerousness is applied to minors the same way it is applied to adults. Grave disability, as applied to a minor, is defined as “a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter even though provided to the minor by others.” (WIC §5008(l)) There is no expectation that the minor be able to provide these elements for themselves.

Parental Consent

Parental consent is not required in order to detain and transport a minor pursuant to §5150. Nor is parental consent necessary for a minor to be admitted on an involuntary 72-hour hold.

The facility shall make every effort to notify the minor's parent or legal guardian as soon as possible after the minor is detained. (WIC §5585.50). Every effort shall be made to obtain the consent of the minor's parent or legal guardian prior to treatment and placement of the minor. Inability to obtain the consent of the minor's parent or legal guardian shall not preclude the involuntary treatment of a minor who is determined to be gravely disabled or a danger to himself or herself or others. (WIC §5585.53)

Legally Emancipated Minors

Legally emancipated minors requiring involuntary treatment shall be considered adults. (§WIC 5585.59)

ATTACHMENT A – “5150” TRAINING

STATE OF CALIFORNIA-HEALTH AND HUMAN SERVICES AGENCY

DEPARTMENT OF MENTAL HEALTH

APPLICATION FOR 72 HOUR DETENTION FOR EVALUATION AND TREATMENT MH 302 (REV.08/04)FRONT

Confidential Client/Patient Information

See California WIC Section 5328 and HIPAA Privacy Rule 45 C.F.R. §164.508

Welfare and Institutions Code (WIC) §5157 requires that each person when first detained for psychiatric evaluation be given certain specific information orally, and a record kept of the advisement by the evaluating facility.

DETAINMENT ADVISEMENT

1 My name is _____
I am a (Peace Officer, etc.) with (Name of Agency)
You are not under criminal arrest, but I am taking you for examination by mental health professionals at (Name of Facility).
You will be told your rights by the mental health staff.

If taken into custody at his/her residence, the person shall also be told the following information in substantially the following form:

You may bring a few personal items with you which I will have to approve. You can make a phone call and/or leave a note to tell your friends and/or family where you have been taken.

2 Advisement Completed Advisement Incomplete

Good Cause for Incomplete Advisement

3

Advisement Completed By

Position

Date

4

5

6

7 To: _____

8 Application is hereby made for the admission of _____

9 Residing at _____ California, for 72 hour treatment and evaluation pursuant to §5150 (adult) et. seq. or §5585 et. seq. (minor), of the WIC. If a minor, to the best of my knowledge, the legally responsible party appears to be/is: (circle one) Parent; Legal Guardian; Juvenile Court as a WIC 300; Juvenile Court as a WIC 601/602; Conservator. If known, provide names, address and telephone number:

10 _____

11 The above person's condition was called to my attention under the following circumstances: (see reverse side for definitions)

12 The following information has been established: (Please give sufficiently detailed information to support the belief that the person for whom evaluation and treatment is sought is in fact a danger to others, a danger to himself/herself and/or gravely disabled.)

13 Based on the above information, it appears that there is probable cause to believe that said person is, as a result of a mental disorder:

A danger to himself/herself A danger to others Gravely disabled adult Gravely disabled minor.

Signature, title and badge of peace officer, member of attending staff of evaluation facility or person designated by county.

Date :

Phone

14

Time: **15**

16 Name of Law Enforcement Agency or Evaluation Facility/Person _____ Address of Law Enforcement Agency or Evaluation Facility/Person _____

17 Weapon was confiscated and detained person notified of procedure for return of weapon pursuant to §8102 WIC (officer/unit & phone #) _____

NOTIFICATIONS TO BE PROVIDED TO LAW ENFORCEMENT

18 NOTIFICATION OF PERSON'S RELEASE FROM AN EVALUATION AND TREATMENT FACILITY IS REQUESTED BY THE REFERRING PEACE OFFICER BECAUSE:

Person has been referred under circumstances in which criminal charges might be filed pursuant to §5152.1 and §5152.2 (officer/unit & phone #) _____

Weapon was confiscated pursuant to §8102 WIC
(officer/unit & phone#)_____

DRAFT

The numbers on the attached “Application for 72 Hour Detention and Evaluation and Treatment” also known as the “5150 form”, correspond to the numbered explanations, below.

1. Print your name on this line. Welfare and Institutions Code §5157 (a) requires that, when first detained, a person placed on a 5150 must be given notification, orally, of their detainment. The person placing the 5150 is responsible for making this advisement. The information required by WIC §5157 (a) has been incorporated into the “Detainment Advisement.”
2. The person placing the 5150 must check one of the two boxes to indicate whether the advisement was completed.
3. If a patient is unable to comprehend the verbal advisement, then do not read the Advisement, check Advisement incomplete” and document the reason.
- 4, 5, 6 If the Advisement is successfully read to the client, print your name in the section labeled “Advisement Completed By,” **(4)** print your position **(5)**, and the date **(6)**.
7. Enter the name of the LPS designated facility where the person will be transported.
8. Enter the complete and legal name of the person.
9. Enter person’s current address. Enter “homeless” if person is homeless.
10. Provide contact information for the person you believe is the legal guardian for the person being placed on a hold.
11. State how this person came to your attention, how were you notified or what did the person do that caused you to become aware of them/their behavior
12. Enter **descriptive** information; What did you see, hear, smell; what did the person and/or others tell you that led you to believe that the person is a danger to himself/herself, and/or danger to others, and/or gravely disabled.
13. Check the box(s) that correctly define the criteria for the hold. If they meet more than one criterion, please check all boxes that apply.
14. The person who placed the §5150 signs their name and enters requested information.
15. The time the person was first detained pursuant to the 5150.
16. Name and address of facility/person placing the person on the 5150.
17. If law enforcement confiscated a weapon, and advised the person of the procedure for return of the weapon, this box must be checked and officer’s information entered
18. Law enforcement must check these boxes and enter requested information, if they wish to be notified of person’s release.

ATTACHMENT B – “5150” TRAINING

Resolution No. _____

Meeting Date: _____

**A RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN DIEGO
PROVIDING FOR THE DESIGNATION OF MENTAL HEALTH PROFESSIONALS
AND OTHER SPECIFIED PERSONS PURSUANT TO SECTIONS 5150 AND
5585.50 OF THE *WELFARE AND INSTITUTIONS CODE***

WHEREAS, the Lanterman-Petris-Short (LPS) Act, as codified in Sections 5150 and 5585.50 of the *Welfare and Institutions Code*, provides that designated members of the attending staff of a facility designated by the County of San Diego and approved by the California Department of Mental Health as a facility for 72-hour treatment and evaluation (LPS designated facility), designated members of mobile crisis teams operated by LPS designated facilities, or other professional persons designated by the County may, upon probable cause, take, or cause to be taken, specified persons suffering from mental disorders into custody and place them in LPS designated facilities for 72-hour treatment and evaluation; and

WHEREAS, the Board of Supervisors of the County of San Diego desires that the Local Mental Health Director or Local Mental Health Director Designee designate such persons in accordance with the criteria and guidelines set forth in this resolution;

NOW, THEREFORE, IT IS HEREBY RESOLVED that by the Board of Supervisors of the County of San Diego that the Local Mental Health Director or Local Mental Health Director Designee is hereby authorized to designate on behalf of the County attending staff of LPS designated facilities, members of mobile crisis teams operated by LPS designated facilities and other professional persons to take, or cause to be taken, into custody persons suffering from a mental disorder in accordance with the provisions of Sections 5150 and 5585.50 of the *Welfare and Institutions Code*.

IT IS FURTHER RESOLVED that the Local Mental Health Director or Local Mental Health Director Designee has the authority and is qualified to designate/certify the following persons to initiate 72-hour detentions pursuant to Sections 5150 and 5585.5 of the *Welfare and Institutions Code*

- a) Licensed psychologists, Licensed Clinical Social Workers, Registered Nurses, and licensed Marriage and Family Therapists on the attending staff of an LPS designated facility; and
- b) Psychiatrists on the attending staff of an LPS designated facility; and
- c) Persons designated under paragraph a) above who are members of a “mobile crisis team” operated by an LPS designated facility; and

- d) Emergency room physicians who are credentialed by or under contract to serve in the emergency rooms of licensed general acute care hospitals; and
- e) Persons designated under paragraph a) above who are members of the County-contracted Psychiatric Emergency Response Teams (PERT); and
- f) County Mental Health Services staff designated under paragraph a) above who are members of a designated Juvenile Forensics treatment team out stationed at Polinsky Children's Center.

IT IS FURTHER RESOLVED that of the professional persons specified in this resolution, the Local Mental Health Director or Local Mental Health Director Designee shall designate and authorize such professional persons to initiate 72-hour detentions pursuant to Sections 5150 and 5585.50 of the Welfare and Institutions Code only if the professional persons meet the following criteria:

- a) The professional person will be appropriately licensed within his or her discipline in the State of California and act only within the scope of his or her practice; and
- b) The individual will have successfully completed training and testing approved by the Local Mental Health Director or Local Mental Health Director Designee related to the *Welfare and Institutions Code*, Sections 5150 and 5585.50 detention process. Professional persons previously certified to initiate detentions under the 1994 resolution shall continue to retain this authority during the six months following adoption of the revised resolution, allowing them an opportunity to successfully complete the new training and testing. All certifications issued pursuant to the 1994 Resolution shall be considered invalid at the end of this six-month transition period and such professional persons must be certified under this Resolution to be authorized to initiate detentions as described in the Resolution; and
- c) With the exception of emergency room physicians, all designated individuals must possess a minimum of two (2) years' recent, clinical experience in a mental health setting, treating clients who are seriously mentally ill or emotionally disturbed per State criteria.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing was passed and

adopted by the Board of Supervisors, County of San Diego, State of California, on

this _____ day of _____, 2005, by the following vote, to-wit:

AYES:
 NOES:
 ABSENT: