

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

MENTALLY ILL
SUBJECT

DATE: July 14, 2016

NO: D-11

FROM CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: Mentally Ill
Handling the Mentally Ill

I. POLICY

Sworn personnel will take into custody persons falling within the provisions of Welfare and Institutions Code (W&I) Section 5150. The Administrative Services Division will insure sworn members will receive training yearly on mental health issues with a focus on updating current practices.

II. LAW

- A. State law determines that the San Joaquin County Mental Health Service is responsible for care of the mentally ill.
- B. Section 5150 W&I states in part:
 - 1. 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 the attending staff, as defined by regulation, of an evaluations facility designated by county, designated members of a mobile crisis team provided by Section 5651.7 W&I, or other professional persons designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him/her in a facility designated by the county and approved by the State Department of Mental Health as a facility of 72-hour treatment and evaluation.
- C. Section 5150.1 W&I states:
 - 1. No peace officer seeking to transport, or having transported a person to a designated facility for assessment under Section 5150 W&I shall be instructed by mental health personnel to take or keep the person at a jail solely because the unavailability of an acute bed, nor shall the peace officer be forbidden to transport the person directly to the facility. No mental health employee from any agency, state, city, or private agency providing Short-Doyle psychiatric emergency service shall interfere with a peace officer performing duties under Section 5150 W&I by preventing the peace officer from entering designated facilities with the person to be assessed, nor shall any employee of such an agency require the peace officer to remove the person without assessment as a condition of allowing the peace officer to depart. "Peace Officer" for the purpose of this section also means a jailer seeking to transport or who are transporting a person in custody to a designated facility for assessment consistent with Section 4011.6 or 1011.9 of the Penal Code and Section 5150 W&I.
- D. Section 5150.2 W&I states:
 - 1. In each county whenever a peace officer has transported a person to a designated facility for assessment under Section 5150 W&I, that officer shall be detained no longer than the time necessary to complete documentation of the factual basis of the detention and a safe and orderly transfer of physical custody of the person. The documentation shall include detailed information regarding the factual circumstances and observations constituting probable cause for the peace officer to believe that the individual required psychiatric evaluation under the standards of Section 5150 W&I. Each county shall establish disposition procedures and guidelines with local law enforcement agencies as necessary to relate to persons not admitted for evaluation and treatment and who decline alternative mental health services and to relate the safe and orderly transfer of physical custody of persons under Section 5150 W&I, including those who have a criminal detention pending.

- E. Sheehan v. City and County of San Francisco
 - 1. Arrestees displaying mental illness or disorders, including persons taken into custody under the W&I Code, are protected by the American with Disabilities Act (a federal law) and, therefore, officers must show they have made a reasonable accommodation before using force during the arrest of a mentally ill suspect.

- F. Reasonable accommodation should be based on the behavior of the person and the danger presented to the officer, the person themselves, or other individuals. Officers should make every attempt to mediate or diffuse the situation prior to a physical confrontation. Mediation and de-escalation techniques can include using the principles of Procedural Justice. Officers should consider the following:
 - 1. Active immediate violent behavior by the person that requires immediate intervention.
 - 2. Active verbal resistance by persons threatening themselves or others.
 - 3. Likelihood of a physical confrontation to occur as a result of the officer using physical force prior to trying to diffuse or mediate the situation.
 - 4. Escalation of force should be done according to sound police practice followed by de-escalation as soon as possible.

III. PROCEDURE

- A. All Cases of Mental Illness:
 - 1. Officers will take into custody persons, as a result of mental disorder, that are a danger to others, to themselves, or gravely disabled.
 - 2. At the time the person is taken into custody, unless a responsible relative of the person is in possession of the person's personal property, an officer shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person taken into custody. An officer shall include a description of the property and its disposition in the narrative of the arrest report. Where a responsible relative has taken possession of the person's property, the report needs to only include the name of such responsible relative.
 - 3. Person's suffering from mental illness or gravely disabled may have trouble following directions, processing information being told to them, or become aggressive at police contact. The following should be taken into consideration when dealing with a person:
 - a. Using Procedural Justice when handling the person and/or their family:
 - i. Giving the person a voice
 - ii. Being neutral in decision making, focusing on the best available options for the person.
 - iii. Transparency in actions with the person and family so they understand what police officers can legally do.
 - iv. Establishing trust with the person to aid them in making decisions.
 - b. When interacting with a person with mental illness the following should be taken into consideration:
 - i. Letting the person talk and explain what is going on with them.
 - ii. Allowing the person to assist in making decisions on their behalf
 - iii. Explaining the options available.
 - iv. Officers should avoid placing the person in a position they feel they are physically cornered unless there is a tactical reason to do so for officer safety or safety to the community.
 - c. When dealing with a mental health patient in crisis, officers should:
 - i. Avoid speaking in harsh tones.
 - ii. Avoid sudden gestures or movements.
 - iii. Avoid responding to verbal abuse.
 - iv. Refrain from belittling the cause of the crisis or the actions of the person.
 - v. Redirect negative behavior by providing options to the person.
 - 3. Section 5150 W&I requires that each person, when first detained for psychiatric evaluation, be given certain specific information orally, and a record be kept of the advisement by the evaluating facility.

- a. All detentions that fall within the guidelines described in Section 5150 W&I shall include the completion of the Application for 72-hour Detention for Evaluation and Treatment Form (refer to attachments). This form will summarize the reason for the contact, transport/arrest, and will minimize the amount of time the police officer must accompany the subject once they arrive at County Mental Health. By completing this form, it will ensure that the subject is detained at the facility until examined by a psychiatrist. An arrest report will be completed ensuring that the subject is entered into RMS and a record is kept on file.
 - b. The Application for 72-hour Detention for Evaluation and Treatment Form includes a "detainment advisement" located at the top right corner. This advisement must be read to the detainee prior to the arrest or transportation of the subject if he/she falls within the guidelines of Section 5150 W&I. If the officer is not able to complete the advisement or the subject does not understand the advisement, the officer must check the "advisement incomplete" box and indicate the reason for not completing the advisement on the first line of the form.
 - c. This form includes an area for officers to summarize the detention and state the probable cause for the arrest or transportation. The officer shall complete the Application for 72-hour Detention for Evaluation and Treatment Form if the person being transported or detained falls within the following guidelines (definitions are included on the back of the form):
 - i. A danger to himself/herself
 - ii. A danger to others
 - iii. Gravely disabled adult; or
 - iv. Gravely disable minor
 - d. Upon arriving at County Mental Health, officers will submit the white and yellow copy of the form to the on-site crises worker. The pink copy shall be submitted to the Records Section as an attachment to the Arrest Report.
4. Prior to transportation, all mentally ill persons will be thoroughly searched by the arresting officer and the transporting officer, if not the same officer.
 5. Officers should keep in mind that a mentally ill person may be distraught, disoriented and incapable of rational thought or behavior, thereby posing a continuing danger to officers or to him/herself. Accordingly, absent highly unusual circumstances, the person should be handcuffed.
 6. When transporting a mentally ill person, the officer should consider:
 - a. A two-officer unit since a mentally ill person may be resentful of a patrol wagon.
 - b. Patrol wagon if the person is unruly or hard to manage.
 - c. Ambulance if the person is incapacitated.
 7. When available, a female officer should transport females to the appropriate destination.
 8. Occasionally, an on-scene psychiatric social worker will need police assistance for transportation for a commitment.
 - a. Such calls will be handled by patrol officers.

B. Firearms

Section 8102 of the Welfare and Institutions Code requires that whenever a person who has been detained or apprehended for examination of his or her mental condition is found to own, have in his or her possession, or under his or 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. The officer shall complete the Receipt and Notice of Rights for Confiscated Firearms and Other Deadly Weapons, which includes this section:

Mental Health Incidents – Notice of Rights

A report of the details surrounding the confiscation of these items may be given to the City Attorney's Office. That office may file a petition in the County Superior Court within 30 days of the above date, alleging that the return of these items would be likely to result in endangering you or others. If the City Attorney's Office does not file a petition, the items must be returned to you by the law enforcement agency. The return of any firearm is subject to a determination by the Department of Justice stating that you are eligible to possess firearms and payment of all applicable storage fees. If the City Attorney's Office does file such a petition, a copy of the City Attorney's Office petition will be mailed to you at the address you provided to the law enforcement agency. If you wish to have a hearing, you must notify the clerk of the County Superior Court within 30 days of the filing date of the City Attorney's Office petition. The clerk will then set a date and time for such hearing, and a notification will be mailed to you. If you are detained under Welfare and Institutions Code 5150, and are subsequently involuntarily admitted to a mental health facility, you are prohibited from owning, possessing and controlling firearms for a period of five (5) years in California. If you currently own any firearms, you must contact the nearest law enforcement agency to surrender those firearms.

When a person is being placed in a mental health facility on a 72-hour hold for treatment and evaluation, in addition to completing The Application for 72-hour Detention for Evaluation and Treatment Form and completing a W&I 5150 arrest report, the officer shall confiscate any firearm or other deadly weapon in plain view. The officer shall ask the person if he/she owns or possesses any firearms and deadly weapons and check for registered firearms. If there are firearms or other deadly weapons to be confiscated, the officer will conduct a consensual or other lawful search. If consent is denied, and there is no other lawful reason to search the scene or residence, contact Case Review for follow-up with a warrant to confiscate the firearms or other deadly weapons. All W&I 5150 reports should be routed to Case Review and the Mental Health Liaison Officers for follow-up of any seizure or lack of seizure of firearms.

C. Court Orders:

1. Persons will be taken into custody when a court order exists.
2. The court order allows the following persons to take a subject into custody:
 - a. Peace officers.
 - b. Mental health counselors.
 - c. Court appointed officials.

D. Inpatient Walkaways:

1. Any patient that walks away or escapes from Mental Health and becomes involved in a criminal act shall be booked at the San Joaquin County Jail when apprehended.
2. A walkaway or escapee may be returned to Mental Health if he/she has not been involved in a criminal act.

E. Persons Mentally Ill and Intoxicated:

1. Persons who are mentally ill and intoxicated will be booked into the San Joaquin County Jail.
 - a. The arresting officer shall inform the transporting officer (if it's a different officer) and jail personnel that the person being booked is mentally ill under Section 5150 W&I.

F. Private Hospitals:

1. Occasionally, private hospitals will ask for assistance to handle mentally ill patients who must be taken to Mental Health.
 - a. Officers shall obtain the names of the doctors and nurses in attendance and list their statements as to what the patient's actions have been.
 - b. Complete the Application for 72-hour Detention for Evaluation and Treatment Form.

- c. Complete an Arrest Report.
- d. If the person is suffering from a medical condition, he/she should be transported by ambulance. If no medical condition exists, the person may be transported in a police vehicle.

G. Voluntary Commitment:

- 1. Occasionally, citizens will ask officers for transportation to Mental Health. In these instances officers shall:
 - a. Determine the reason for transportation.
 - i. Does the subject meet any of the elements of 5150 W&I?
 - ii. Does the subject just want transportation to talk with a mental health counselor?
 - (a) In this type of situation, the officer may transport the subject to Mental Health. No Application for 72-hour Detentions for Evaluation and Treatment Form or Arrest Report is needed. A notation shall be made in the officer's Unit History of the action taken.
 - b. If the subject meets any of the elements of 5150 W&I, the officer shall complete the Application for 72-hours Detention for Evaluation and Treatment Form.
 - c. The officer shall transport the subject to Mental Health.
 - d. The officer shall complete an Arrest Report.

APPLICATION FOR ASSESSMENT, EVALUATION, AND CRISIS INTERVENTION OR PLACEMENT FOR EVALUATION AND TREATMENT

Confidential Client/Patient Information
 See California W&I Code Section 5328 and HIPAA Privacy Rule 45 C.F.R. § 164.508

Welfare and Institutions Code (W&I Code), Section 5150(f) and (g), require that each person, when first detained for psychiatric evaluation, be given certain specific information orally and a record be kept of the advisement by the evaluating facility.

DETAINMENT ADVISEMENT

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 or her residence, the person shall also be told the following information

Advisement Complete **Advisement Incomplete**

You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.

Good Cause for Incomplete Advisement _____

Advisement Completed By _____	Position _____
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Language or Modality Used _____	Date of Advisement _____
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To (name of 5150 designated facility) _____

Application is hereby made for the assessment and evaluation of _____

Residing at _____, California, for up to 72- hour assessment, evaluation and crisis intervention or placement for evaluation and treatment at a designated facility pursuant to Section 5150, et seq. (adult) or Section 5585 et seq. (minor), of the W&I Code. If a minor, authorization for voluntary treatment is not available and to the best of my knowledge, the legally responsible party appears to be / is: (Circle one) Parent; Legal Guardian; Juvenile Court under W&I Code 300; Juvenile Court under W&I Code 601/602; Conservator. If known, provide names, address and telephone number: _____

The above person's condition was called to my attention under the following circumstances: _____

I have probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself/ herself, or gravely disabled because: (state specific facts) _____

Based upon the above information, there is probable cause to believe that said person is, as a result of mental health disorder:
 A danger to himself/herself. **A danger to others.** **Gravely disabled adult.** **Gravely disabled minor.**

Signature, title and badge number of peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, designated members of a mobile crisis team, or professional person designated by the county.	Date _____	Phone _____
	Time _____	

Name of Law Enforcement Agency or Evaluation Facility/Person _____	Address of Law Enforcement Agency or Evaluation Facility/Person _____
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NOTIFICATIONS TO BE PROVIDED TO LAW ENFORCEMENT AGENCY

Notify (officer/unit & telephone #) _____

NOTIFICATION OF PERSON'S RELEASE IS REQUESTED BY THE REFERRING PEACE OFFICER BECAUSE:

The person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.

Weapon was confiscated pursuant to Section 8102 W&I Code. Upon release, facility is required to provide notice to the person regarding the procedure to obtain return of any confiscated firearm pursuant to Section 8102 W&I Code.

SEE REVERSE SIDE REFERENCES AND DEFINITIONS

**APPLICATION FOR ASSESSMENT,
EVALUATION, AND CRISIS INTERVENTION
OR PLACEMENT FOR EVALUATION AND
TREATMENT**

REFERENCES AND DEFINITIONS

"Gravely Disabled" means a condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing and shelter. SECTION 5008(h) W&I Code

"Gravely Disabled Minor" means 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. Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder. SECTION 5585.25 W&I Code

"Peace officer" means a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 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 he or she has a legally mandated responsibility. SECTION 5008(i) W&I Code

Section 5152.1 W&I Code

The professional person in charge of the facility providing 72-hour evaluation and treatment, or his or her designee, shall notify the county mental health director or the director's designee and the peace officer who makes the written application pursuant to Section 5150 or a person who is designated by the law enforcement agency that employs the peace officer, when the person has been released after 72-hour detention, when the person is not detained, or when the person is released before the full period of allowable 72-hour detention if all of the conditions apply:

- (a) The peace officer requests such notification at the time he or she makes the application and the peace officer certifies at that time in writing that the person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.
- (b) The notice is limited to the person's name, address, date of admission for 72-hour evaluation and treatment, and date of release.

If a police officer, law enforcement agency, or designee of the law enforcement agency, possesses any record of information obtained pursuant to the notification requirements of this section, the officer, agency, or designee shall destroy that record two years after receipt of notification.

Section 5152.2 W&I Code

Each law enforcement agency within a county shall arrange with the county mental health director a method for giving prompt notification to peace officer pursuant to Section 5152.1 W&I Code.

Section 5585.50 W&I Code

The facility shall make every effort to notify the minor's parent or legal guardian as soon as possible after the minor is detained. Section 5585.50 W&I Code.

A minor under the jurisdiction of the Juvenile Court under Section 300 W&I Code is due to abuse, neglect, or exploitation.

A minor under the jurisdiction of the Juvenile Court under Section 601 W&I Code is due to being adjudged a ward of the court as a result of being out of parental control.

A minor under the jurisdiction of the Juvenile Court under Section 602 W&I Code is due to being adjudged a ward of the court because of crimes committed.

Section 8102 W&I Code (EXCERPTS FROM)

(a) Whenever a person who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own, have in his or her possession or under his or 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.

"Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(b)(1) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall issue a receipt describing the deadly weapon or any firearm and listing any serial number or other identification on the firearm and shall notify the person of the procedure for the return, sale, transfer, or destruction of any firearm or other deadly weapon which has been confiscated. A peace officer or law enforcement agency that provides the receipt and notification described in Section 33800 of the Penal Code satisfies the receipt and notice requirements.

(2) If the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.

(3) Health facility personnel shall 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.