

MARIN COUNTY SHERIFF'S DEPARTMENT  
GENERAL ORDER

**CHAPTER 5 – Operations**  
GO-05-25  
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**DATE**  
4-20-15

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**MENTAL ILLNESS COMMITMENTS AND THE CONFISCATION OF FIREARMS/DEADLY WEAPONS**

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**POLICY**

It is the policy of this Department, pursuant to Welfare and Institution Code 5150, that when any person is determined to be a danger to himself/herself or others, or who is gravely disabled, a peace officer may take that person into custody for transfer to a facility designated by the County, and approved by the State Department of Mental Health, as a facility for 72-hour mental health evaluation and treatment.

Such a facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the deputy, or other individual authorized by statute, and why there was probable cause to believe the person being detained was a danger to himself/herself or others, or was gravely disabled.

**PROCEDURE**

The commitment of a person under Welfare and Institutions Code 5150 is a civil detention and does not constitute an arrest. If a deputy believes that a person falls within the provisions of Welfare and Institutions Code 5150, he/she shall transport that person to the designated facility for evaluation and commitment.

Any deputy responding to a call involving a suspected or actually mentally disabled individual should consider the following in order to ensure the safety of the individual, the deputy, and other members of the public:

- (a) Any available information which might assist in determining the cause and/or nature of the person's actions or stated intentions.
- (b) Conflict resolution and de-escalation techniques.
- (c) The availability of staff that have been trained as Critical Incident Team members.
- (d) Community or neighborhood mediation services.
- (e) Community resources which may be readily available to assist with the mental health issues.

While these steps are encouraged, they are not required and nothing in this policy is intended to dissuade deputies from taking other reasonable action to ensure the safe detention of the individual suspected of suffering from a qualifying mental health condition.

Deputies should consider a 5150 commitment over arrest when mental health issues appear to be a mitigating factor from committing a minor crime or creating other public safety issues related to the underlying qualifying mental health condition.

When transporting any individual for a 5150 commitment, deputies should have the Communications Center notify the receiving facility of their estimated time of arrival, the level of cooperation exhibited by the patient, and whether or not any special medical care is required.

Deputies may transport individuals in a patrol unit and shall secure them in accordance with proper departmental handcuffing and restraint procedures. Should the detainee require transport in a medical

transport vehicle and the safety of any person, including the detainee, requires the presence of a deputy during that transport, a Watch Commander or Patrol Sergeant's approval is required before the transport begins.

Upon arrival at the treatment facility, the deputy will escort the individual into an area designated by a facility staff member. Absent exigent circumstances, the transporting deputy should not assist facility staff with the admissions process. However, if the detained individual is delivered while restrained, the deputy may assist with transferring the individual to facility supplied restraints prior to removing his/her department restraint devices/ The deputy may also remain available to staff, if requested, to ensure a safe admissions process.

The deputy shall complete an application for a 72-Hour detention for evaluation and treatment form, provide the original to a facility staff member assigned to that patient, and retain a copy of the application for inclusion in his/her incident report. The deputy should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the detainee's involuntary detention.

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

- (a) The deputy'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.
- (c) The name of the facility to which the person is being taken.

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.

If the person is being taken into custody at his/her residence, the detained person should be advised that he/she may take a few personal items, which the deputy must first approve, be asked if assistance is needed to turn off any appliances or water, and if circumstances allow, that the detainee may make a telephone call or leave a note indicating where he/she is being taken.

Deputies 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 jail booking, the deputy 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 a 5150 commitment.
- (c) Facilitate the individual's transfer to jail.
- (d) Notify jail staff of the facts that would support a 5150 commitment.
- (e) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a 5150 commitment.

#### Confiscation of Firearms and Other Weapons

Whenever a person is taken into custody for a 5150 commitment, the handling deputies should seek to determine if the person owns or has access to any firearm or other deadly weapon defined by Welfare and Institutions Code 8100, including, but not limited to querying the automated firearms system to determine if the subject has a firearm registered in their name. It is helpful to make that inquiry prior to arrival so appropriate safety precautions can be made.

Welfare and Institutions Code Section 8102 requires, in part, 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/her possession or under his/her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer.

Deputies are however reminded that a search warrant may be needed to lawfully enter a residence or other place in which the detainee maintains an expectation to privacy before searching for and/or seizing a firearm or other deadly weapon, unless an exception to the search warrant requirement exists, i.e., there is an exigency or prior consent has been received from the detainee or someone else having standing over the area to be searched.

In the event a firearm or deadly weapon is seized pursuant to W&I Section 8102, deputies shall issue a receipt describing the firearm(s) and/or deadly weapon(s) seized and listing any serial number or other identification that is available. Deputies shall also advise the person of the procedure for the return of any firearm or other deadly weapon that has been taken into custody and Institutions Code 8102(b)).

Whenever the handling deputy has cause to believe that the future return of any confiscated weapon might endanger the person being detained or other member(s) of the public, the deputy shall detail those facts and circumstances in a report. The report shall be forwarded to the Investigations Division, which shall be responsible for assigning the task of 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 for up to 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.

RELATED STANDARDS:

PAT 03-02  
PAT 03-05  
PAT 03-06  
W&I Code Section 5150  
W&I Code Section 8100  
W&I Code Section 8102

AFFECTED DIVISIONS:

All

DATE OF REVISIONS:

None

By order of

  
ROBERT T. DOYLE  
SHERIFF-CORONER