

**MARIN COUNTY SHERIFF'S OFFICE
PATROL DIVISION POLICY & PROCEDURES MANUAL**

CHAPTER 1 – CRIMINAL ENFORCEMENT
PAT-01-03
Page 1 of 5

DATE
October 15, 1995
Rev. 7/15/02

RELEASE OF FIREARMS

POLICY

It is the policy of the Mann County Sheriffs Office to release firearms only to those persons who are not prohibited by law from possessing firearms.

DEFINITIONS

Firearm - A firearm is any device designed to be used as a weapon from which is expelled, through a barrel, a projectile by the force of an explosion or other form of combustion.

Possession - For the purpose of this order, the word possession means the act of owning, possessing, controlling, receiving or attempting to own, possess, control, or receive any firearm.

Illegal Possession - Persons convicted of felony and certain misdemeanor offenses as described in Penal Code Section 12021(c)1, and persons addicted to narcotics as described in Section 12021 are prohibited from processing firearms.

Mental Health Prohibition - Section 8100 of the Welfare and Institutions Code prohibits persons from possessing firearms for a period of six months from the date of:

- The admittance to a Mental Health Facility and in the opinion of a Mental Health Practitioner that the person is a danger to himself or others within the meaning of W&I Code sections 5250, 5260, or 5270.10.
- The person communicates a serious threat of physical violence against another to any psychotherapist.
- Section 8103 prohibits for the lifetime the possession of firearms of any person who is alleged by a court to be a danger to others as the result of mental disorder, illness, or because the person is a mentally disordered sex offender. Procedure for this court action is outlined in 8102 W & I et. seq.

PROCEDURE FOR RETURN OF FIREARMS HELD BY THE DEPARTMENT

Public safety shall be the overriding concern in the return of any firearm held by the Sheriffs' Office.

Persons requesting the return of a firearm will be directed to the Property Section of the Sheriffs Office.

The Property Section shall take the following actions prior to the release of a firearm.

- Obtain the requesting persons name, date of birth and driver's license by viewing photographic identification.
- Advise the person that a check must be made with the Department of Justice to verify that they may possess a firearm.
- Advise the person that the firearm will be available for release subject to the Department of

- Justice clearance.
- Contact the California Department of Justice Firearms Denial Unit at 916-227-3749 providing the persons identifying information and request that a firearms denial check be made. Provide your name and return phone number so that you may receive the response to your inquiry.
- If the weapon is held as evidence, contact the Mann County District Attorney's Office and verify that the weapon is no longer needed as evidence.

If the weapon is held because of a recent (last 30 days) W & I Code detention, other than 5150, 5151, and 5152 W & I Code contact the Mental Health Facility where the person was detained and determine if a firearms prohibition notice was sent to the Department of Justice pursuant to 5250, 5260, 5270.15 W & I Code.

If the person is not prohibited from possessing firearms, obtain final authorization for release from a supervisor of the Investigations Division.

Mann County Sheriffs Department's Weapons Admonishment Form is to be completed with one copy given to the individual receiving the weapon. The original to Records Unit for filing with original case.

Domestic Violence

- Section 12028.5, Family Code Section 6389, deadly weapon(s) may be retained during the pendency of the Emergency Protective Order. But no later than five full court days unless extended by obtaining a permanent protective order from the court having jurisdiction.
- Section 12028.5, et. seq. Will allow the taking into custody deadly weapon(s) for 48 hours but not longer than 72 hours, at which time they may be returned.
- Section 12028.5(e) PC enumerates a method by which deadly weapon(s) may be seized and a petition filed in superior court within 10 days of seizure to determine if the deadly weapon (firearm) should be returned.

RELATED STANDARDS

PC 12021-12028.5 ; W&I 8102- 8103

AFFECTED DIVISIONS

Patrol Division
Investigations Division
Custody Division
Court Services Division

DATES REVISED

10/15/95
8/1/97
7/15/02 (replaces GN95-07)

By Order of

DANIEL PAYNE, CAPTAIN
BUREAU OF FIELD SERVICES



MARIN COUNTY SHERIFF'S OFFICE
3501 Civic Center Drive, Room 145, San Rafael, CA 94903

MCSO CASE NUMBER: _____

WEAPONS ADMONISHMENT

The weapon being released to you must be stored and transported in the trunk of your vehicle. Any ammunition for this weapon will not be released at this time; you may make another appointment to pick up the ammunition at a later date, or you may request the ammunition be destroyed. You are encouraged to go straight home and secure the weapon. Do not display the weapon on city streets, in public buildings or in public view. These actions will cause you to be in violation of Sections 12025 and/or 12031 of the California Penal Code, and may lead to your arrest.

Marin County Sheriff's Office
Investigations Division - Property/Evidence Section

Signature of MCSO personnel releasing property

Date

Signature of person accepting property

Date

INTER-OFFICE MEMORANDUM
Office of County Counsel

TO: Captain Tom McMains
FROM: Renee Giacomini Brewier
DATE: December 30, 1999
RE: Welfare and Institutions Code section 8102 procedure

You have asked this office for a procedure that the Sheriff's Department should follow pursuant to Welfare and Institutions section 8102 which mandates that law enforcement personnel confiscate firearms or weapons from persons detained for either a mental examination or a hold pursuant to sections 5150, 5250 or 5300 of the Welfare and Institutions Code. Under section 8102, the Department must advise the detainee of the procedure for the return of the confiscated weapon and must retain the confiscated weapon for a specific time period.

The Crisis Unit must notice the Department upon the release of the detained individual. The Department has thirty (30) days from the date of the notification by the crisis unit to petition the superior court to determine if the weapon should be returned. If the Department decides to petition the superior court, my office would handle the petition process. We would then also notice the detainee of his or her right to a hearing on the petition. If the Department does not initiate proceedings within the 30-day period, it must make the weapon available for return.

The 30 day time period is clear and does not allow a lot of time. Therefore, in order for the Department to have an accurate record of the when it confiscated the weapon and noticed the detainee of the confiscation and procedure for return, I suggest the attached form be used indicating that:

- Date of confiscation and notice to detainee;
- Notice that the Department has custody of the detainee's weapon;
- Date the holding facility noticed detainee of the procedure for return of the weapon;
- Date the holding facility noticed the Department of release of the detainee;
- Date of filing of petition;
- Date of 30 day notice to detainee;
- Last known address of detainee.

Copies of the form should be served on the detainee and the holding facility. The department must keep a copy of the form.

Once the department has served copies of the form, I should be notified if the Department will want to petition the Court regarding the return of the weapon. This will give me time to fashion a court petition. Please let me know if you have any further questions regarding this issue.

WEAPON CONFISCATION AND RETURN
§8102 W&I

TO: _____
Name of Detainee

You are hereby notified under Section 8102 of the Welfare & Institutions Code of the following:

1. You have been detained for a mental examination or placed on a hold under Section _____ of the Welfare & Institutions Code and during the detention a
5150/5250/5300
_____ was seized by the Marin County Sheriffs Department Upon notice
type of weapon
from the Crisis Unit of your release, the Marin County Sheriffs Office will have 30 days to either make your weapon available for pick-up by you or in the alternative to file a Petition in the Marin County Superior Court asking for the court to determine whether the return of your weapon would be likely to result in endangering you or any other person. If the Marin County Sheriff's Office files such a Petition you will have the right to respond to the Petition and to request a hearing.

DATED: _____
SIGNATURE OF OFFICER

2. You are being released from the Crisis Unit. You have been notified that a
_____ was seized by the Marin County Sheriff's Department. Upon notice of
type of weapon
release by the Crisis Unit of your release, the Marin County Sheriffs Office will have 30 days to either make your weapon available for pick-up by you or in the alternative to file a Petition in the Marin County Superior Court asking for the court to determine whether the return of your weapon would be likely to result in endangering you or any other person. If the Marin County Sheriff's Office files such a Petition you will have the right to respond to the Petition and to request a hearing.

DATED: _____
SIGNATURE OF AUTHORIZED PERSON
MARIN COUNTY CRISIS UNIT

3. NOTICE TO DETAINING FACILITY: You must notify the Marin County Sheriff's Office of the date of detainee's release upon such release.
Date of Release: _____ ;notice under W&I §8102 was given on _____
by _____.

DATED: _____
SIGNATURE OF AUTHORIZED PERSON
MARIN COUNTY CRISIS UNIT

4. This will notify the Marin County Counsel that the Sheriffs Office wishes to file a Petition in Superior Court to ensure that the weapons belonging to _____ are not returned. The petition must be filed no later than 30 days after the release date of _____.