



# LPS TRAINING MANUAL

## Santa Clara County Mental Health Department

**Designed/Written by: Santa Clara County 5150 Authorization Committee**

**Special Thanks to: Lisa Song, LCSW, Los Angeles County Department of Mental Health**

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**January 2011**

## INTRODUCTION

This manual is intended to provide law enforcement, physicians, and mental health professionals working and practicing in Santa Clara County with a detailed overview of the legal requirements involved in initiating 72-hour holds, the first step in the civil commitment process for individuals with mental health disabilities. Calif. Welf. & Inst. Code §§ 5150 - 5157 (hereinafter referred to as WIC). The goal of this manual is to ensure that 5150 authority is exercised in a professionally responsible manner and according to law. It should be noted that the WIC allows for local discretion in some ways and, therefore, the procedures and policies followed in Santa Clara County may differ from those in other counties.

### Definitions of Applicable Terms

**Danger to others:** This term is not defined by statute or regulation, but can be assumed to mean words or actions which indicate a serious intent to cause bodily harm to another person, and which owe to a mental disorder. If the danger to others finding is based on the person's threats rather than acts, the evaluator must believe it is likely that the person will carry out the threats.

**Danger to self:** This term is not defined by statute or regulation, but can be assumed to mean threats or actions which indicate the intent to commit suicide or inflict serious bodily harm on oneself, or actions which place the person in serious physical jeopardy, and which proceed from a mental disorder.

**Gravely Disabled-Adult:** An adult who, as a result of a mental disorder (rather than a chosen lifestyle or lack of funds) is unable to provide for his or her basic needs for food, clothing or shelter. (WIC 5008) The grave disability may result from neglect or inability to care for oneself. Courts have ruled that if a person can survive safely in freedom with the help of willing and responsible family members, friends or third parties, then he or she is not considered gravely disabled.

**Gravely Disabled-Minor:** A person 17 years old or younger who, as the result of a mental disorder, is unable to utilize the elements of life, which are essential to health, safety and development, including food, clothing, or shelter, even though provided to the minor by others. (WIC 5585.25)

**Medical Treatment:** Involuntary detentions under LPS may **not** be used to compel or justify non-psychiatric medical treatment, or treatment with psychiatric medication. In certain cases involving conservatees, specific authorization for non-routine medical care as deemed necessary may be obtained from the court. If the person's condition will become life threatening or pose a serious threat to his or her health, and the person is unable to give an informed consent, the court may be petitioned for permission to provide necessary treatment. (Probate Code § 3200-3211)

**Mental Disorder:** The term mental disorder is not defined by law, and the initiator of a 5150 is not required to make a medical diagnosis of a mental disorder. The initiator must be able to articulate the manifested behavioral symptoms of a mental disorder.

\*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)

**Peace Officer:** A peace officer is a duly sworn law enforcement agent, as that term is defined in 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. (WIC 5008)

**LPS Designated Facility:** Typically, a hospital facility which has received designation from the Mental Health Department (approved by both the Santa Clara County Board of Supervisors and the State Department of Mental Health) to evaluate and treat involuntary psychiatric patients. The following facilities hold LPS Designation in Santa Clara County:

- Santa Clara Valley Medical Center
- Stanford University Hospital
- El Camino Hospital
- Palo Alto Veterans Hospital
- Good Samaritan Hospital
- Unit 8A at the Main Jail

**Non-designated Facility:** A hospital or other facility which does not hold LPS Designation.

**Associated Clinics:** Ambulatory treatment sites owned and operated by any of the above facilities.

**5150 Authorization Card:** A small, wallet-sized card issued by the Santa Clara County Mental Health Department, which identifies the holder as having the authority to initiate and sign Applications for 72 Hour Detention for Evaluation and Treatment, pursuant to 5150.

**Probate Conservatorship:** A probate conservatorship results when the court appoints a legal guardian for managing financial affairs or the personal care of one who is either physically or mentally unable to handle either or both.

**LPS Conservatorship:** An LPS conservatorship results when the court appoints a legal guardian to manage the financial or personal care of individuals who are gravely disabled due to mental illness, mental disorder or chronic alcoholism. A conservator has the authority to permit placement of an individual in a locked psychiatric hospital, or other facility which will address the person's needs.

**Public Guardian:** The Public Guardians Office of Santa Clara County is the county agency which functions as the legal guardian for conserved persons when no more appropriate person can be appointed legal guardian.

## THE LANTERMAN-PETRIS SHORT ACT

The **Lanterman-Petris-Short Act** (WIC § 5000 et seq.) – **the LPS Act** – in part establishes a uniform, state-wide, civil commitment scheme for the involuntary detention of individuals with mental health disabilities at specific hospitals designated by the County Board of Supervisors on recommendation of the Local Mental Health Director, and approved by the California State Department of Mental Health. The act set the precedent for modern mental health commitment procedures in the United States. It was co-authored by California State Assemblyman Frank Lanterman (R) and California State Senators Nicholas C. Petris (D) and Alan Short (D), and signed into law in 1967 by Governor Ronald Reagan, and becoming effective starting July 1, 1969. The LPS Act went into full effect on July 1, 1972. It cited seven articles of intent:

- To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, people with developmental disabilities, and persons impaired by chronic alcoholism, and to eliminate legal disabilities;
- To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism;
- To guarantee and protect public safety;
- To safeguard individual rights through judicial review;
- To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons;
- To encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;
- To protect mentally disordered persons and developmentally disabled persons from criminal acts. (WIC § 5001)

The Act ended the indiscriminant practice of judicial psychiatric commitments, except for sentencing involving certain criminal offenses (e.g. violent sex offenders with mental disorders) and criminal defendants determined to be incompetent to stand trial as a result of a mental disorder or found not guilty by reason of insanity. The Act establishes a procedure for civil commitment involving graduated periods of involuntary detention coupled with due process rights allowing individuals to contest their confinement. The Act also establishes legal procedures for court appointment of a third party decision maker (conservator) for individuals determined to be "gravely disabled," (*Conservatorship of Roulet* (1979) 23 Cal.3d 219)–see p. 8 for definitions that constitute grave disability. The Act expressly favors voluntary treatment over involuntary treatment and provides that individuals have a right to apply for voluntary treatment. (WIC § 5003).

The LPS Act sets forth the procedures and conditions for involuntary detention, the due process rights attached to confinement and the rights of institutionalized patients. This manual focuses on the procedures involved in initiating 72-hour holds pursuant to WIC §§ 5150 - 5157.

## What Is a 5150 or 72-Hour Hold?

### Statutory Requirements and Conditions:

When a 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 evaluation facility designated by the county, designated members of a mobile crisis team provided for by WIC § 5651.7, 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 Mental Health as a facility for 72-hour treatment and evaluation. (WIC § 5150)

**A 72- hour hold is an application for involuntary admission**, not an order for admission. It gets the individual to the door and triggers an assessment *“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.* If, in the professional’s judgment, the person can be properly served without being detained; then he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis.” (WIC § 5151 - emphasis added) If the patient is being held on the basis of danger to others, the application should document the specific threats or attempts at bodily harm the person in question has made, along with the dates, if known. This information is not only needed to justify the 72-hour hold, but may be essential for the establishment of a subsequent 180-day certification. (WIC § 5300, et seq.)

Involuntary detention is not an arrest. Persons involuntarily detained retain the due process rights guaranteed by statute, common law, and state and federal constitutional provisions. For example, individuals detained beyond 72 hours have a right to judicial review and/or a certification review hearing in the hospital. (WIC § 5250 et seq., *Doe v. Gallinot* (1979) 486 F. Supp. 983, aff’d (1981) 657 F.2d 1017)

With the exception of being able to freely leave the facility, persons involuntarily admitted retain all specified rights under the LPS Act and have “...the same rights and responsibilities guaranteed all other persons by the Federal Constitution and the laws and the Constitution and law of the State of California, unless specifically limited by federal or state law or regulations.” (WIC § 5325.1) Waivers signed by the patient, responsible relative, guardian, conservator cannot be used to deny a right. (California Code of Regulations, Title 9 § 865.2 (c) (hereinafter referred to as CCR) and WIC § 5325(i))

### Why write a 72-hour hold?

The legislative intent of the LPS Act includes providing for prompt evaluation and treatment of persons with serious mental disorders. Assessment for a 5150 is the first step towards obtaining evaluation and treatment for the individual. If it is determined that a person meets the criteria (danger to self, others, or grave disability due to a mental disorder) and the person is unwilling or unable to accept inpatient treatment on a voluntary basis, he or she may then be placed on a 5150. The 5150 allows for legal authority to detain a person involuntarily so the person may be brought to a designated facility, where a face-to-face assessment must be completed before admission to the hospital may be made.

## Probable Cause

### Definition:

Probable cause is established by the presence of facts that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that the person involuntarily detained under the LPS Act suffers from a mental disorder, and is a danger to himself or herself, a danger to others, or gravely disabled. Probable cause must be based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the belief or suspicion that the person is dangerous to himself or others or gravely disabled as a result of a mental disorder. Probable cause requires some objective, verifiable evidence of dangerousness or grave disability. (*People v. Triplett* (1983) 144 Cal.App.3d, 283)

### Determination of Probable Cause In the Community:

(a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 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.

(b) For purposes of this section, "information about the historical course of the person's mental disorder" includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.

(c) If the probable cause in subdivision (a) is based on the statement of a person other than the one authorized to take the person into custody pursuant to Section 5150, a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving any statement that he or she knows to be false.

(d) This section shall not be applied to limit the application of c. (WIC § 5150.05)

When completing a 72-hour hold application, one should be mindful that it is a legal, rather than a clinical document. Statements made on the form need to be anchored in observable, describable behavior that substantiates a finding of probable cause to believe the person is a danger to self, others, or is gravely disabled because of a mental disorder. In other words, what the person said and did to indicate that he or she met the detention criteria.

The ability to place a person on an involuntary hold in the community is the only situation outside of law enforcement in which an individual may take away an individual's Constitutional right to freedom and detain him or her against his or her will. This is a serious responsibility and the decision should never be made lightly.

## Procedures to Be Followed When Initiating a 72-Hour Hold and Taking a Person into Custody in the Community

1. The person responsible for initiating the 5150 shall provide the following information pursuant to WIC § 5157:
  - a. Advise the person of your name and occupation ( eg., John Doe and I am an officer with the San Jose Police Department).
  - b. Advise the person being taken into custody that he/she is not under arrest and that they are being taken to a mental health facility for evaluation and the name of the facility to which the person is being taken.
  - c. When the person is taken into custody at their residence, he/she should also be told that he/she may:
    - i. Bring a few personal items subject to approval.
    - ii. Make a personal phone call and/or leave a note to let friends and/or family know where you are going
2. Pursuant to WIC § 5156, the person initiating the 5150 in the community must take reasonable precautions to preserve and safeguard the personal property of the individual being taken into custody unless there is a responsible guardian, conservator or relative in possession of the property
  - a. "Responsible relative" includes a spouse, parent, adult child or adult sibling

### Who may write a 5150?

Only those persons identified in Section 5150 of the WIC may initiate a 5150 detention. All peace officers have statutory authority to initiate 5150 holds. The Director of the Mental Health Department for Santa Clara County holds the authority to designate other individuals as having the authority to initiate 5150 detentions. When authorized, these individuals will be provided a 5150 Authorization Card. The card must be in their possession at all times while carrying out their job duties.

### Eligibility

The following professionals are eligible to apply for training to become 5150 Authorized (i.e., possess the ability to initiate and sign the Application for a 72-Hour Detention for Evaluation and Treatment). These individuals must work for the Santa Clara County Mental Health Department, or for a contract provider of the Santa Clara County Mental Health Department, or for one of the above identified designated or non-designated facilities and associated clinics (see definitions):

- Licensed physicians (limited to Psychiatrists and Emergency Department physicians, with certain exceptions)
- Licensed clinical psychologists
- Licensed clinical social workers
- Licensed marriage, family and child counselors
- Licensed Psychiatric Residents
- Licensed psychiatric RN's (who have been licensed as a psychiatric nurse for at least three years and who have worked in an LPS designated hospital in a full time capacity for a minimum of one year, and who have been authorized by the Director of Mental Health.

- Licensed psychiatric technicians, who have been licensed as a psychiatric technician for at least three years and who work at MHUC or in a setting where no other staff person has the authority to initiate 5150s, and who have been authorized by the Director of Mental Health.

#### Discretionary 5150 Authorization for unlicensed individuals

Exceptions to licensed staff only for ability to initiate 5150s will be made for experienced unlicensed individuals working at programs or sites where no licensed staff is readily available to initiate 5150s when needed. Such exceptions apply to staff who currently have 5150 cards in Santa Clara County, and who have been responsible for evaluation of the need for a 5150, and the initiation of needed 5150s. Newly hired and un-experienced unlicensed staff are not eligible for this exception. Exceptions are to be justified in writing by the Agency director and will be granted on an individual basis by the Medical Director.

Professionals who do not provide direct services to Santa Clara County Mental Health Department or to any agency or organization that has a contract with Santa Clara County Mental Health Department, may not receive a 5150 Authorization Card unless their agency/employer has a specific, written agreement with the Santa Clara County Mental Health Department regarding appropriate supervision of the card holder by the agency/employer. Supervision shall include necessary education in the areas of liability and pertinent changes made to the WIC.

When the card holder leaves employment of the agency for which they use their card, and is no longer working for any other agency of the County or agency contracted to the County, the 5150 Authorization Card is to be surrendered to the Learning Partnership Division of the Mental Health Department by the holder, employer, or agency.

#### Who cannot write a 5150?

- Any one who is not a peace officer, and who does not have a valid 5150 Authorization card.

#### To Which Facilities May a 72- Hour Hold Be Written To?

1. An **LPS designated facility**, private or county
2. Any designated facility in **Santa Clara County only**  
**\*Special Note:** The LPS Act (WIC § 5170) provides for involuntary detention of inebriates (chronic alcoholics), however there are no LPS designated facilities in Santa Clara County for such detentions. Therefore, you cannot detain a person involuntarily in Santa Clara County for intoxication or chronic drug use only, pursuant to section 5170.

**Evaluation and Treatment During the period of the 72-hour Hold****Assessment After Arriving At a Designated Facility:**

Before being admitted for treatment on the 72-hour hold, a patient must receive a face-to-face assessment to determine whether there is probable cause to involuntarily detain the person. The assessment may be performed by a psychiatrist alone or by a licensed psychologist and a psychiatrist, who have a collaborative treatment relationship with the patient. (WIC §§ 5151 and 5152). The assessment is a three-pronged evaluation to determine whether the person:

1. Has a mental disorder (9 CCR, § 881(m));
2. Is a danger to him/herself or gravely disabled as a result of a mental disorder (see above for definitions) and;
3. In the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis. WIC § 5151. The assessment must also include an evaluation of the individual's willingness and ability to accept inpatient treatment on a voluntary basis.

**Evaluation and Treatment After Admission:**

The person shall receive an evaluation as soon as possible after admission. (WIC § 5152) An evaluation "...consists of multidisciplinary professional analyses of a person's medical, psychological, educational, social, financial, and legal conditions as may appear to constitute a problem." (WIC § 5008(a))

"The person shall receive any treatment that his or her condition requires for the full period that he or she is held." (WIC § 5152(a))

**Informed Consent for Treatment with Antipsychotic Medications:**

The evaluation shall include a medication assessment. If the evaluation determines that the person is receiving medication(s) or requires treatment with medication(s) as a result of a mental illness, "...written and oral information about the probable effects and possible side effects of the medication..." being recommended shall be provided to the person before obtaining consent to administer medication. The following information shall be given orally to the patient:

1. The nature of the mental illness or behavior, that is the reason that the medication is being given or recommended.
2. The likelihood of improving or not improving without the medications.
3. Reasonable alternative treatments available.
4. The name and type, frequency, amount and method of dispensing the medication and the probable length of time the medication will be taken. (WIC § 5152(c))
5. The probable side effects of these drugs known to commonly occur, and any particular side effects likely to occur with the particular patient as well as side effects that may occur to patients taking the medication beyond three months. (9 CCR § 851(e) and (f))

If the patient agrees to take the medication the physician shall have the patient sign a consent form which shall be maintained in the patient's treatment record. "If the patient does not wish to sign the consent form. It shall be sufficient to place the unsigned form in the patient's records... with the notation that while the patient understands the nature and the effects of antipsychotic medications and consents to the administration of such medications, the patient does not desire to sign a written consent form." (9 CCR § 852)

If the physician is unable to successfully impart the information, the physician shall document in the patients' medical record the justification for not providing the information. (WIC § 5152( c)(4))

If the patient either passively or actively refuses to accept medication when offered, the medication may not be administered over his/her objection except in an "emergency" situation or after a legal determination has been made that the person lacks the capacity to make a rational treatment decision to refuse. (*Riese v. St. Mary's Hospital and Medical Center* 209 Cal.App.3d 1303 (1987))

### **Release and Discharge of the 72-hour Hold**

Nothing in this section shall be interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under Section 5150. Furthermore, the preadmission assessment requirement of this section shall not be interpreted to require peace officers to perform any additional duties other than those specified in sections 5150.1 and 5150.2

Each person admitted to a facility for 72-hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon as possible after he 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. The person shall be released before 72 hours have elapsed only if the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person no longer requires evaluation or treatment

In situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is placed under a 72-hour hold and there is a collaborative relationship between the psychiatrist and the psychologist, either the psychiatrist or psychologist may authorize the release of the person from the hold, but only after they have consulted with one another (WIC § 5152). [Please note that the psychologist exception applies only to designated, contract facilities whose policy expressly permits this practice.]

When a person is being assessed for a 72-hour hold, and it is decided to not involuntarily detain the individual, then clinically appropriate alternative voluntary services, as determined by the evaluating physician, shall be offered:

Whenever any person presented for evaluation at a facility designated under the LPS Act is found to be in need of mental health services, but is not admitted to the facility, all

available alternative services provided for pursuant to section 5151 shall be offered as determined by the county mental health director. (WIC § 5150.3)

### **Discontinuation of the 5150 Detention**

5150 detention shall not be discontinued by anyone other than a licensed psychiatrist or psychologist, following a face to face evaluation of the detained individual that determines the individual is not detainable under WIC § 5150. [See the provision for the psychologist exception in the preceding section.] Such evaluations need not take place in Emergency Psychiatric Services or at a County Designated 5150 Receiving Facility. Once the psychiatrist or psychologist discontinues the 5150, the individual may be offered hospitalization on a voluntary basis if the psychiatrist or psychologist determines a need for this, and if the individual is willing and able to be treated on a voluntary basis.

### **Liability associated with a 72- hour involuntary hold**

Anyone who knowingly or willfully is responsible for detaining a person in violation of the commitment statutes is liable in a civil code action by the detained party (WIC § 5259).

- The writer of a 5150 shall **not** be held civilly or criminally liable for any action by a person released before the end of the 72- hours (WIC § 5154).
- If the individual assessed meets detention criteria, and probable cause is supported due to accounts of someone other than the designated person (e.g., a friend or family member), the person giving the information may be civilly liable for giving an intentionally false statement (WIC § 5150).

**Santa Clara County Mental Health Department Application to Initiate 72-hour hold**

Interested qualified professionals (identified above), must submit an application in writing to the Quality Improvement Division of the Santa Clara County Mental Health Department. The Quality Improvement Division will determine eligibility for training, schedule training as appropriate, and notify the applicant of the scheduled training.

**Training**

All persons seeking the ability to initiate 5150 detentions must submit to a standard training, conducted by the Santa Clara County Mental Health Department. The training will provide education in the areas of legal and clinical aspects of 5150 detention, patients' rights issues, the proper method of evaluation for 5150 detention, the proper completion of a 5150 application form, and other related information. Opportunity for questions and problem-solving will be available at the training. At the completion of training, the applicant will be required to pass a written test on the information presented. Those who successfully pass the test will be granted authority to initiate 5150s in Santa Clara County, and will be issued a 5150 Authorization Card attesting to this authority. Those who do not pass the test must submit to re-testing, and pass the test prior to being granted such authority.

**Card Issuance**

Once issued, cards are valid for a period of five years (the date of expiration will be indicated on the card), after which holders may, if they wish to continue to be authorized to initiate 5150s, attend refresher training. Upon successful completion of the refresher training, a new card will be issued, extending authorization for another five years.

When the card holder leaves employment, and is not working with any of the above identified agencies, the 5150 Authorization Card must be surrendered to the Quality Improvement Division by the holder (or the holder's agency). The employer is required to notify the Learning Partnership Division whenever a card holder leaves employment.

The Quality Improvement Division will maintain an electronic list of all persons who hold 5150 Authorization Cards. This list will be made available, upon request, to law enforcement agencies.

**Agency Specificity**

The 5150 Authorization Card is valid only when used in the performance of duties for the agencies identified above. However, holders who work for more than one of the above identified agencies may employ their card while working for each of the employers. Separate cards will not be required when the holder works for greater than one authorized agency.

The Quality Improvement Division must be informed by the holder when they are employed by multiple authorized agencies. The electronic list of persons holding 5150 Authorization Cards will specify where the card may be used validly. If the list does not specify use for a specific agency, the card may not be validly used for that agency. Note: this information is mentioned twice in the manual.

**Invalid Card Use**

Should the 5150 Authorization Card be used in any setting other than those specified on the list maintained by the Quality Improvement Division, the initiated 5150 shall be considered an invalid hold. Professionals engaged in solo or group private practices are not authorized to write 5150s in their private practices. Cardholders who initiate invalid holds shall be subject to revocation of their 5150 Authorization Card.