LEGAL ASPECTS OF 5150 HOLDS

Mental Health Advocacy Project
Law Foundation of Silicon Valley
4 N Second St Ste 1300, San Jose
patientsrights@lawfoundation.org

Training Roadmap

Legal Framework for 5150s
Requirements for Initiating 5150s
Filling Out the 5150 Form
Special 5150 Issues

Mental Health Advocacy Project

Mandated by state law to protect rights of mental health consumers

Patients’ Rights Advocates for Santa Clara County since 1978

Investigate and resolve complaints regarding denial or punitive withholding of statutory patients’ rights

Monitor mental health facilities for compliance with patients’ rights provisions
5150 HOLDS: LEGAL FRAMEWORK

Lanterman-Petris-Short (LPS) Act

- Enacted in 1969 to end the inappropriate, indefinite, and involuntary commitment of individuals with mental health disabilities
- Intent was to balance the need for public safety while safeguarding individual rights
- General rule: least restrictive and client-centered treatment (participation in treatment decisions)
- Established patients' due process rights

HOW DOES A “5150” WORK?
What Does a 5150 Do?

- Permits designated persons to impose a 72-hour legal hold on a person believed to need of involuntary psychiatric treatment
- Permits detention/transport (by law enforcement, ambulance, or other authorized person) of person to a facility for purpose of mental health assessment and evaluation. Not an automatic admission.

What Does a 5150 Do? (cont'd)

- Upon assessment, client either:
  - REMAINS on 5150 for further evaluation and treatment OR
  - Is DISCHARGED from 5150, and admitted as voluntary patient OR given crisis intervention and connected with outpatient services on a voluntary basis.

- 5150s DO NOT authorize
  - Involuntary administration of medication or
  - Involuntary medical treatment or procedures

- No patient right to hearing in the hospital during a 5150 hold

Who can initiate a 5150?

“Peace Officers”

- Police Officers
- Sheriff Deputies
- State Park Rangers
- State University Peace Officers,
  - Etc.

Persons Approved by the Santa Clara Behavioral Health Department

- Authorization is limited to organization you are approved under
- No authorization for private practice
Where Can Persons on 5150s Be Held?

- Persons on 5150s should be transported to a facility designated by Behavioral Health Department for involuntary assessment, evaluation, and treatment.

- Persons on 5150s might be transported to non-LPS general acute care hospitals: applicable requirements discussed later in training.

Designated Facilities in Santa Clara County

- Santa Clara Valley Medical Center (EPS)
- Uplift CSU (17 & Under)
- Good Samaritan Hospital
- Stanford Hospital
- El Camino Hospital - Mountain View
- San Jose Behavioral Health
- Crestwood PHF
- Kaiser PHF Santa Clara
- VA Palo Alto
- Main Jail 8A Unit

Who are we holding?

- Brothers, sisters, children, mothers, employees, & fathers

- Consider the terms: Patients vs Clients vs Victims, vs Consumers or Subjects

- What the hold can mean for people:
  - Loss of income/job
  - Missing important events
  - Subject to upsetting and/or traumatic experiences: handcuffs, seclusion and restraint, violence
  - Condition may worsen initially
LEGAL REQUIREMENTS FOR INITIATING A “5150”

Criteria for Writing a 5150

When a person,

- “as a result of a mental health disorder”
- “is a danger to others, or to himself or herself, or gravely disabled,”

a designated person may

- “upon probable cause,”

take . . . the person into custody for a period of up to 72 hours.

Nexus Requirement: “As a result of a mental health disorder”
What Is Not “As a Result of a Mental Health Disorder?”

- Developmental/Intellectual Disability Alone
- Drug or Alcohol Use Alone (in SCC)

DANGER TO SELF, DANGER TO OTHERS, GRAVE DISABILITY

What is “Danger to Self”?

- “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.”
What is “Danger to Others?”

- "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."

What is “Gravely Disabled”? 

- "A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (Welf. & Inst. § 5008 (h)(1)(a))


Grave Disability: Minors

- A minor is gravely disabled, if, “as a result of a mental disorder, [the minor] 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.”

- (Welf. & Inst. Code § 5585.25)
Grave Disability: Incarcerated Persons

- Unable to take advantage of the food, clothing, and shelter provided to them in custody.
- In Santa Clara County Jails, authorized mental health professionals initiate 72-Hour holds. Persons in custody who are on 72-hour holds must be housed on Unit 8A.

Grave Disability: Special Considerations

- Odd or eccentric behavior is not equivalent to grave disability
- Behavior must be viewed through cultural lens
- 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.

Person Must Presently Meet DS/DO/GD Criteria

Conservatorship of Benvenuto, 180 Cal. App. 3d 1030 (1986): Experts testified that Mr. Benvenuto, was gravely disabled because he might stop taking medications and become gravely disabled.

- Court Said: Finding people gravely disabled because of a concern of future decision to stop medication would be a deprivation of "liberty based on probabilistic pessimism."
What is “Probable Cause”? 
- Probable cause is:
  • A state of facts known to you
  • that would lead a person of ordinary care and prudence (reasonable person)
  • to believe or entertain a strong suspicion
  • that person detained as a result of a mental health disorder meets one of the three criteria (GD, DS, DO)

Probable Cause Considerations

Rational inferences

• You can make logical conclusions or deductions based on facts presented.

Historical course of illness

• ONLY IF the information is RELEVANT and has a "REASONABLE BEARING" on whether the person meets 5150 criteria

Third party statements

• Must have a "REASONABLE BEARING" on 5150 criteria.
• Third parties are liable if they intentionally provide you with false information.

Describing Behavior on 5150 Form

• A 5150 is a LEGAL rather than a clinical document
• Statements need to be anchored in observable, describable behavior
• Remember: Link between behavior and mental illness
• Symptoms vs. Behavior
FILING OUT THE 5150

- You must fill out your name, title, language, and date of advisement.
- To the receiving facility you must:
  - Write the name of designated facility the person is going to.
  - The person's name AND address.

Advisement Completed By: [Name]
Position: [Position]
Language or Notability Used: [Language]
Date of Advisement: [Date]

To (name of 5150 designated facility): [Name]
Address: [Address]

Application is hereby made for the assessment and evaluation of [Name].

Residing at [Residence Address].

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., (or) Section 5355 et seq., (or) of the WIC 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: [Guardian/Parent/Legal Guardian/Conservator/Joint Petitioner under WIC Code 300, Joint Petitioner under WIC Code 801/902.]

If known, provide names, addresses and telephone numbers in area provided below.

Make sure to fill out the checkbox stating you completed the advisement. If you were unable to complete the advisement indicate the good cause for the incomplete advisement.

Date of California Health and Human Services Agency

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

Confidential/Privileged Information


You are required to submit the following information:

[Completion Indicators: Advisement Complete or Advisement Incomplete.]

Good Cause for Incomplete Advisement:

[Reasons for incomplete advisement provided here.]

DEPARTMENT OF HEALTH CARE SERVICES

[Signature]

[Name]

[Title]
The Advisement

Each person shall be provided with this information orally and in writing in a language or modality accessible to the person.

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

**Patient’s Girlfriend showed SHC to report he had cut off his ear.**
She mentioned the ear was the right ear (R) on 3/31/17. He was treated at the hospital and then taken to the jail where he was referred for mental health by medical.

- Explain with specific facts as to what happened.
- Examples:
  - "I was called in to a residence because there was a domestic dispute."
  - "Patient posted on Facebook that he was going to harm himself."

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):

- Patient says, "I would not do again. I love you. The voices told me that if I tried to cut off my ear she would know it and love me back."
- I will kill myself if she is not with me. I am going to cut my ear off and hang myself if that does not work.

(CONTINUED ON NEXT PAGE)
If you get collateral from anyone, make sure you have their name, address, phone number and their relation to the person being put on the hold!

MAKE SURE THAT YOU CHECK OFF THE GROUNDS THAT APPLIES!

FALL OR TALL

- Patient was anxious and paranoid
- Patient is having AH
- Patient is hallucinating
- Patient was pacing back and forth worrying that he was being followed
- Patient shares that he is hearing the voice of an angel telling him how to hurt himself
- Patient states that he is seeing his dead grandmother in his bedroom
• 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

• Emancipated Minor: Marriage, Army, or Court
  - Provide information about residency
  - Provide friend, family, or neighbor information.

• Circle the “Section 5150” (adult) or “Section 5585” (minor) to indicate which type of hold you are writing on the line below.

SPECIAL 5150 ISSUES

Altering a 5150

- A 5150 can be altered by filling out another 5150 and writing AMENDED on the top and using the same dates as the ORIGINAL 5150
Some Guidelines for Non-LPS Designated Hospitals

- Immunity from liability for detaining a person against her will only extends up to 24 hrs after medical stabilization, and only when certain requirements are met.
- Hospital is obligated to provide ongoing assessment, evaluation, and crisis intervention to persons on 5150s.
- Clocking 5150 hold:
  - If written outside hospital, starts at time hold was initiated outside (e.g. by law enforcement)
  - If written by designated hospital staff, clock starts at time of medical stabilization

Arranging Transfer on a “24 Hour Bed Hold”

<table>
<thead>
<tr>
<th>NOT Medically Stable</th>
<th>Medically Stable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparations for <strong>transfer</strong> must begin before medically stable</td>
<td>Patient is transferred to LPS facility</td>
</tr>
</tbody>
</table>

24 hours maximum

5150s & LPS Conservatees

- Persons conserved under the LPS Act do not require 5150 in order to be detained/transported for acute-level mental health treatment
- Need only authorization from conservator (e.g. Deputy Public Guardian, or court-appointed private conservator)
Liability & 5150 Writers

- Strong protections for 5150 writers:
  - Liable only if you knowingly or willfully detain an individual in violation of the statutes
  - NOT liable for actions by a person released before the end of the 72-hour period (WIC § 5154, 5259.3)

- Liability for a third party providing information:
  - Liable only if the party knowingly provides false information leading to a 5150 detention

Confidentiality

- A 5150 is part of patient's medical record
- Therefore, same broad confidentiality standards under LPS, HIPAA apply
- Exceptions to confidentiality protections are limited (e.g., for police and current treatment providers).

Culturally Informed Interventions

- People from different linguistic backgrounds may use different words to describe symptoms

- Behavior must be viewed through cultural lens

- Cultural Humility: involves an ongoing process of self-exploration and self-critique combined with a willingness to learn from others. It means entering a relationship with another person with the intention of honoring their beliefs, customs, and values. It means acknowledging differences and accepting that person for who they are.
Reduce Stigma

Stigma creates an environment of shame, fear, and silence that prevents many people from seeking help and treatment. Stigma is the largest barrier to people seeking mental health treatment.

Types of Stigma
- Public
- Institutional
- Self

How does it play into the 5150 process?

Reminder on Accessibility

- If the patient is being sent from the street with a wheelchair or bicycle, it is the your responsibility to take it to the facility, or find a safe place to store it.
When writing a hold at a home

“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.”

The evaluator must ensure that:
- the resident area is secured; windows and doors should be locked.
- You are responsible to help with pets. Either help them make arrangements for care, or make arrangements for the pet’s care.

San Jose Animal Shelter
(408) 794-7297

San Jose Cupertino Los Gatos Saratoga Silicon Valley Animal Shelter (408) 764-0344

Santa Clara County Animal Shelter (408) 201-0660

Handout on Specific Types of Holds Authorized in Santa Clara County
Mental Health Advocacy Project

- Free legal services and advice
- 3 Units – Patients’ Rights, Economic Rights, and Housing Rights

4 N Second St Ste 1300
San Jose, CA 95113
(408) 294-9730 and 1-800-248-MHAP