LPS TRAINING MANUAL

Designed/Written by: Santa Clara County 5150 Authorization Committee, including focus groups of EMS, family members, and consumers

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INTRODUCTION

We believe in the wellness, treatment, and freedom of all those treated in the County of Santa Clara. Despite the hope that treatment can be voluntary, it sometimes becomes necessary to hold someone against their will, when they become a danger to themselves, others or gravely disabled as a result of their mental health diagnosis. In these situations, the county has granted a select few the privilege of detaining those who require it. It is a privilege and an honor to be given this power to detain others. It is our hope that those who find it necessary to write 5150 holds use compassion, kindness, and thoughtfulness when finding it necessary to do so. Most importantly, we hope all those granted this privilege will take the time to consider all available options carefully and act with altruism, cultural awareness, and an understanding of the stigma associated with mental health challenges.

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.

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Definitions of Applicable Terms

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

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

Crisis Stabilization Unit (CSU): Provides a less restrictive, less costly alternative to hospitalization. CSU clients have immediate access to clinicians and referral assistance for a broad range of other community services as needed. Length of stay varies based on individual needs but is generally a four to ten days. Twenty-four hours a day, seven days a week, a multi-disciplinary team of nurses, psychiatrists, and other behavioral health professionals provide assessment to determine appropriate level of care. Team members provide support, including psychiatric care, medication, and counseling, for stabilization of the crisis.

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 health diagnosis. 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 health diagnosis.

Department of State Hospital (DSH): Offers inpatient mental health treatment specializing in legal commitments. These hospitals, such as Napa State Hospital, are where those mandated for treatment by a criminal or civil court judge. In the state of California over 90 percent of those treated in state hospitals have been accused of committing crimes linked to their mental health (Department of State Hospital Website).

Emergency Psychiatric Services (EPS): 24-hour locked psychiatric emergency room, which provides emergency psychiatric care to residents of Santa Clara County.

Gravely Disabled-Adult: An adult who, as a result of a mental health diagnosis (rather than a chosen lifestyle or lack of funds) is unable to provide for their 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 they are not considered gravely disabled.

Gravely Disabled-Minor: A person 17 years old or younger who, as the result of a mental health diagnosis, 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)

Institution for Mental Diseases (IMD): An institution for mental diseases as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

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 their 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 Health Diagnosis: The term mental health diagnosis is not defined by law, because if the law specified using, for example the Diagnostic and Statistical Manual (DSM), then every time a new edition came out the law would need to be rewritten. Also, the DSM includes such diagnosis as Caffeine Addiction, which are not intended for involuntary holds. The initiator of a 5150 is not required to make a mental health diagnosis. The initiator must be able to articulate the manifested behavioral symptoms of a mental health diagnosis.

> *Intellectual disability, 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 they have a legally mandated responsibility. (WIC 5008)

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 health diagnosis 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.

LPS Designated Facility: Typically, a hospital facility which has received designation from the Mental Health Services 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.

LPS Designated Facility continued: 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
- San Jose Behavioral Health
- Crestwood Manor Psychiatric Health Facility
- Uplift Crisis Stabilization Unit
- Kaiser Behavioral Health

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

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. This conservatorship is commonly used for those with dementia.

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.

Assumptions, General Agreements and Principles of LPS in the County of Santa Clara

1) Mental health is a community responsibility. No single agency, organization or facility in the community has the resources, scope of services, or skill sets to address the challenges on their own. The County of Santa Clara places a high value on the respectful and collaborative process used to develop this protocol and is committed to using that same process as this protocol is implemented and refined over time.
2) Our shared goal is to ensure patient access to the best possible treatment, at the right time and in the best place for each individual. This commitment will allow for the care provided to be with the greatest respect for the rights of patients.
3) We agree to leverage the competencies of our community partners and to share training and knowledge.
4) We are committed to maintaining the safety of individuals and the community. At times, this may make involuntary treatment necessary.
5) Individuals may need treatment at all levels of care and we are committed to the coordination of that care to ensure the best mental and physical treatment.
6) We are committed to reducing stigma, discrimination, and increasing cultural humility, in our culturally and ethnically diverse county.

THE LANTERMAN-PETRIS SHORT ACT

The Lanterman-Petris-Short Act (WIC § 5000 et seq.)−the LPS Act−in part establishes a uniform, statewide, 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 Behavioral 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 health diagnosis 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 indiscriminate practice of judicial psychiatric commitments, except for sentencing involving certain criminal offenses (e.g. violent sex offenders with mental health diagnoses) and criminal defendants determined to be incompetent to stand trial as a result of a mental health diagnosis 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. 9 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 health diagnosis, is a danger to self or others, 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 them 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 they 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 health diagnosis. 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 health diagnosis) and the person is unwilling or unable to accept inpatient treatment on a voluntary basis, they 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 a legal term used to describe the level of evidence needed. In the case of criminal law, some are familiar with the term beyond a reasonable doubt or preponderance of the evidence, which is also a term to describe the level of proof. Probable cause 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 health diagnosis, and is a danger to themselves, 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 themselves or others or gravely disabled as a result of a mental health diagnosis. 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 health, if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to self or others, or is gravely disabled as a result of the mental health condition.

(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 they know 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 health diagnosis. In other words, what the person said and did to indicate that they 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 their 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 they are 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, they should also be told that they 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.
        iii. Secure all doors and windows.
        iv. Ensure there is no running water or appliances that need to be shut off.
        v. Help the person make arrangements for child or pet care
        vi. Ensure the safety of their wheelchair or other means of transportation
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 Behavioral Health Services 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 Behavioral Health Services Department, or for a contract provider of the Santa Clara County Department, or for a non-designated facilities and associated clinics with a written who possess an agreement with the County granting them permission to write 72-Hour Holds:

- Licensed physicians (limited to Psychiatrists and Emergency Department physicians, with certain exceptions)
- Licensed clinical psychologists
- Licensed clinical social workers
- Licensed professional clinical counselors
- Licensed marriage and family therapist
- 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 Behavioral Health Services.
- Licensed physician assistants with two-years' experience in an LPS designated hospital or who work in an ER
- 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 Behavioral Health Services.
- 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 inexperienced 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 Behavioral Health Services Director.

Professionals who do not provide direct services to Santa Clara County Behavioral Health Services or to any agency or organization that has a contract with Santa Clara County Behavioral Health Services Department, may not receive a 5150 Authorization Card unless their agency/employer has a specific, written agreement with Santa Clara County Behavioral Health Services 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 cardholder 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 Behavioral Health Services Department by the holder, employer, or agency.

Who cannot write a 5150?

Anyone 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 health diagnosis (9 CCR, § 881(m));
2. Is a danger to him/herself or gravely disabled as a result of a mental health diagnosis (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, they 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." (WlC § 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 condition or behavior, which 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 patient's 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 pre-admission 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 they are admitted and shall receive whatever treatment and care their condition requires for the full period that they are 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 Behavioral Health Services 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 Behavioral Health Services Department

Application to Initiate 72-hour hold

Interested qualified professionals (identified above), must submit an application by email to the Santa Clara County Behavioral Health Services Department's Learning Partnership Division program staff will determine eligibility for training, schedule training as appropriate, and notify the applicant of the scheduled training. All applicants should apply for renewal at least six months prior to their card expiration.

Training

All persons seeking the ability to initiate 5150 detentions must submit to a standard training, conducted by Santa Clara County Behavioral Health Services 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 have their names submitted to the Behavioral Health Services Director to 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. Passing the test is not sufficient grounds to be given 5150 writing privileges. All those who wish this privilege must be authorized by the Behavioral Health Services Director.

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 training. Upon successful completion of the training, a new card will be issued, extending authorization for another five years.

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

The Learning Partnership Division will maintain an electronic list of all persons who hold 5150 Authorization Cards.

Agency Specificity

The 5150 Authorization Card is valid only when used in the performance of duties for the agencies identified above. However, licensed card 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 more than one authorized agency. If a licensed cardholder begins to work for a new agency they must notify the Learning Partnership at LP5150@sccgov.org and submit a new application form for the new agency. They need not retake the course. Unlicensed waived cardholders may not write holds at additional or new agencies unless they have a valid 5150 card for that specific agency. The cards of waivered unlicensed cardholders do not transfer between agencies because the waiver is based on the agency.

The Learning Partnership 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 Learning Partnership 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.

Appendix A
Beyond the 72-Hour Hold

A facility may hold a patient on 72-hour detention for not more than 72 consecutive hours. After involuntary detention has begun, the total period of detention, including intervening periods of voluntary treatment, shall not exceed the total maximum period the person could have been detained had they been held continuously on an involuntary basis from the time of initial detention. Time a person was detained in an acute care hospital (up to eight hours) prior to being placed on a 72-hour hold must be credited toward the 72-hour period. A patient admitted to the facility on a 72-hour hold may be released prior to its expiration only if the treating psychiatrist believes further treatment is not required. If another professional person believes the patient should be released but the psychiatrist objects, the medical director must make the decision. (§5152)

- At the expiration of the 72-hour hold, the patient must either be:
    1. Released; or
    2. Referred for further care and treatment on a voluntary basis; or
    3. Certified for 14 days of intensive treatment; or
    4. Placed on a temporary conservatorship; or
    5. Placed on a full LPS conservatorship.

5250: 14-Day Certification

If a patient has been held on a 72-hour detention, they may be additionally held for 14 days of intensive treatment only if all of the following apply:

1. The professional staff of the designated facility has found that the patient meets the criteria of being dangerous to others, self, and/ or gravely disabled due to a mental disorder; and
2. The facility providing the intensive treatment is designated by the county and agrees to admit the patient; and
3. The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. (§5250)

- The Notice of Certification must be signed by two people:
    (a) The professional person in charge of the facility, or a physician or licensed psychologist (with five years postgraduate experience) who has been designated by the professional person in charge.
    (b) A physician (a board-certified psychiatrist if possible) or a licensed psychologist

(with five years postgraduate mental health experience) who has participated in the evaluation. If the physician or psychologist designee in the above (a) is the person who performed the medical evaluation, then the second signatory may be another physician or psychologist or, if one is not available, a social worker or registered nurse who participated in the evaluation. (§5251)

- A copy of the certification must be given to the person certified and to anyone else the person designates, and to the person's attorney or advocate representing the person at the "probable cause" hearing. (§5253)
- The person certified must be informed that they have a right to a certification review and to a judicial hearing and to the assistance of a patient rights advocate or attorney. (§5254)
- Nothing in the law prohibits the patient from being allowed out on a pass provided the professional person in charge of the facility or designee allows it. (§5259)
- The patient may not be further detained on an involuntary basis once they no longer meets the involuntary detention criteria. (§5257)
- If a patient's family or conservator expresses a preference for a particular designated treatment facility, the person initiating the certification shall try, if administratively possible, to comply with that preference. (§5259.4)
- At the conclusion of the 14-day period, a patient must be either:
    1. Released; or
    2. Referred for further care and treatment on a voluntary basis; or
    3. Placed on an additional 14-day detention for suicidal persons; or
    4. Placed on 180-day detention for demonstrably dangerous persons; or
    5. Placed on 30-day intensive treatment for grave disability; or
    6. Placed on temporary LPS conservatorship. (§5257)
- The law permits a patient to obtain civil damages from any person who knowingly and willfully detains them in violation of these provisions.(§5259.1)

5260: Second Fourteen-Day Certification - Additional Treatment of Suicidal Persons

At the expiration of the 14-day certification, a patient may be detained for a maximum of 14 additional calendar days only if all of the following apply:

1. The patient, as a result of a mental disorder, either threatened or attempted to commit suicide during the 72-hour or 14-day certification period or was detained originally for that reason.
2. The patient continues to present an imminent threat of suicide as determined by the professional staff of the designated facility.
3. The facility providing additional intensive treatment is equipped and staffed to

provide treatment, and is designated by the county, and agrees to admit the person.

4. The person has been advised of, but has not accepted voluntary treatment. (§5260)

- All of the provisions for the initial 14-day certification must be followed (see subsection B above), except that a certification review hearing is not required. (§5260-5268) The patient may request a writ. (§5275)
- Any person who knowingly and willfully detains a patient beyond the legal time limits is liable for civil damages. (§5265)

5270: Thirty-Day Certification - Additional Intensive Treatment for Grave Disability

Upon the completion of a 14-day period of intensive treatment pursuant to Section 5250, the person may be certified for an additional period of not more than 30 days of intensive treatment under both of the following conditions:

(a) The professional staff of the agency or facility treating the person has found that the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.

(b) The person remains unwilling or unable to accept treatment voluntarily.

- Any person certified for an additional 30 days pursuant to this article shall be provided a certification review hearing in accordance with Section 5256 unless a judicial review is requested pursuant to Article 5 (commencing with Section 5275).
- The professional staff of the agency or facility providing intensive treatment shall analyze the person's condition at intervals of not to exceed 10 days, to determine whether the person continues to meet the criteria established for certification under this section, and shall daily monitor the person's treatment plan and progress. Termination of this certification prior to the 30th day shall be made pursuant to Section 5270.35.
- For a person to be certified under this article, a second notice of certification shall be signed by the professional person in charge of the facility providing intensive treatment to the person and by either a physician who shall, if possible, be a board-qualified psychiatrist, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. The physician or psychologist who signs shall have participated in the evaluation and finding referred to in subdivision (a) of Section 5270.15. If the professional person in charge is the physician who performed the medical evaluation and finding, or a psychologist, the second person to sign may be another physician or psychologist, unless one is not available, in which case a social worker or a registered nurse who participated in the evaluation and finding shall sign the notice of certification.
- A second notice of certification is required for all involuntary intensive treatment, pursuant to

this article, and shall be in substantially the form indicated in Section 5252. (5270.25)

- Copies of the second notice of certification as set forth in Section 5270.25 shall be filed with the court and personally delivered to the person certified. A copy shall also be sent to the person's attorney, to the district attorney, to the public defender, if any, and to the facility providing intensive treatment. (5270.30)
- The person certified shall also be asked to designate any individual who is to be sent a copy of the certification notice. If the person certified is incapable of making the designation at the time of certification, that person shall be given another opportunity to designate when able to do so.
- A certification pursuant to this article (5270) shall be for no more than 30 days of intensive treatment, and shall terminate only as soon as the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person no longer meets the criteria for the certification, or is prepared to voluntarily accept treatment on a referral basis or to remain on a voluntary basis in the facility providing intensive treatment. However, in those situations in which both a psychiatrist and psychologist have personally evaluated or examined a person who is undergoing intensive treatment and there is a collaborative treatment relationship between the psychiatrist and the psychologist, either the psychiatrist or psychologist may authorize the release of the person but only after they have consulted with one another. In the event of a clinical or professional disagreement regarding the early release of a person who is undergoing intensive treatment, the person may not be released unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released before 30 days have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, they shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 30 days have elapsed only if the psychiatrist believes, as a result of the psychiatrist's personal observations, that the person no longer meets the criteria for certification, or is prepared to voluntarily accept treatment on referral or to remain on a voluntary basis in the facility providing intensive treatment. (5270.35.)
- Any person who has been certified for 30 days of intensive treatment under this article, shall be released at the end of 30 days unless one or more of the following is applicable:
    a. The patient agrees to receive further treatment on a voluntary basis.
    b. The patient is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).
    c. The patient is the subject of a petition for post certification treatment of a dangerous

person filed pursuant to Article 6 (commencing with Section 5300).

- Any individual who is knowingly and willfully responsible for detaining a person for more than 30 days in violation of the provisions of Section 5270.35 is liable to that person in civil damages.
- Whenever it is contemplated that a gravely disabled person may need to be detained beyond the end of the 14-day period of intensive treatment and prior to proceeding with an additional 30-day certification, the professional person in charge of the facility shall cause an evaluation to be made, based on the patient's current condition and past history, as to whether it appears that the person, even after up to 30 days of additional treatment, is likely to qualify for appointment of a conservator. If the appointment of a conservator appears likely, the conservatorship referral shall be made during the 14-day period of intensive treatment.
- If it appears that with up to 30 days additional treatment a person is likely to reconstitute sufficiently to obviate the need for appointment of a conservator, then the person may be certified for the additional 30 days.
- Where no conservatorship referral has been made during the 14-day period and where during the 30-day certification it appears that the person is likely to require the appointment of a conservator, then the conservatorship referral shall be made to allow sufficient time for conservatorship investigation and other related procedures. If a temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 30-day certification period. The conservatorship hearing shall be held by the 30th day of the certification period.
- The maximum involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250 and 5270.15 shall be limited to 47 days. Nothing in this section shall prevent a person from exercising their right to a hearing as stated in Sections 5275 and 5353.

Additional 180-Day Detention for Dangerous Persons Section 5300

At the expiration of the 14-day period of intensive treatment, a person may be detained for up to 180 days of additional treatment if the person, because of a mental disorder, presents a demonstrated danger of substantial physical harm to others and has:

1. Attempted, inflicted, or made a serious threat of harm to another after having been taken into custody for evaluation or treatment; or
2. Been taken into custody because of having attempted or inflicted harm to another; or
3. Made a serious threat of substantial physical harm to another within seven days of being taken into custody. (§5300)

- A person’s behavior in the past six years may be considered when determining their current mental condition and demonstrated danger. (§5300.5)
- Neither conviction of a crime nor amenability to treatment is a necessary prerequisite to

establishing a 180-day post certification.

- The petition must be filed during the person's 14-day certification period by the County District Attorney (unless the county board of supervisors delegates the responsibility to the County Counsel) or the person must be released. (§5301, 5114; *People v. Superior Court, 200 Cal. App. 3d 1546, 248 Cal. Rptr. 23 1988*)

Appendix B
Conservatorships

"Conservatorship" is a court created arrangement that gives one person (conservator) authority to make specific kinds of decisions on behalf of another person (conservatee). Statutes governing conservatorships are found in Division 4 of the Probate Code and Division 5 of the Welfare and Institutions Code. Conservatorships are tailored, within statutory parameters, to meet the needs of individual conservatees, but it is possible to speak in terms of four general categories of conservatorship: LPS, Temporary LPS, Probate, and 6500 conservatorships for the Intellectually Disabled

LPS Conservatorship: For Involuntary Mental Health Treatment

The purpose of conservatorship, as provided for in this article, is to provide individualized treatment, supervision, and placement. (WIC 5350) When the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment determines that a person in their care is gravely disabled as a result of mental disorder and is unwilling to accept, or incapable of accepting treatment voluntarily, they may recommend conservatorship to the officer providing conservatorship investigation of the county of residence of the person prior to their admission as a patient in such facility.
The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend conservatorship for a person without the person being an inpatient in such facility, if both of the following conditions are met: (a) the professional person or another professional person designated by him has examined and evaluated the person and determined that he is gravely disabled; (b) the professional person or another professional person designated by him has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.

If the officer providing conservatorship investigation (Public Guardian) concurs with the recommendation, he shall petition the superior court in the county of residence of the patient to establish conservatorship. LPS-Conservatorship is initiated by petition. Only "professional persons" (i.e., licensed mental health professionals; but local court rules may require the petitioner to be a psychiatrist or psychologist) may petition for the creation of an LPS-conservatorship. In the petition, the "professional person" (Section 5352) asserts that she has evaluated the subject and believes he is gravely disabled due to a mental disorder. Petitions may be initiated for persons who are not receiving acute psychiatric inpatient care.

An LPS-conservatorship is time limited. It automatically expires one year from the date of creation. The LPS-conservatee has the right to return to court during the twelvemonth period to contest the fact of the conservatorship, the powers given to the conservator, and other details of the arrangement. The creation of an LPS-conservatorship requires a court or jury finding that the proposed conservatee is "beyond a reasonable doubt" gravely disabled due to a mental disorder. The purpose of the LPS-conservatorship is to "ameliorate the conservatee's grave disability."

In Santa Clara County, the LPS-conservator's powers (authority) are tailored to meet the needs of the individual conservatee. For example, the conservator may have power to manage the conservatee's finances, and/or consent to medical treatment on the conservatee's behalf, and/or secure the conservatee's place of residence. Because the LPS conservatorship is designed to promote mental health treatment, the LPS conservator's set of powers will typically include at least one of the following three powers related to mental health treatment:

1. Power to apply for the conservatee's admission to Skilled Nursing Facilities, and similarly licensed settings.
2. Power to apply for the conservatee's admission to acute inpatient psychiatric care.
3. Power to require the conservatee to receive psychiatric medication.

Temporary Conservatorship (T-Con)

Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in the petition. The officer providing conservatorship investigation or other county officer or employee designated by the county shall act as the temporary conservator (Temporary conservator is always the public guardian). 5352.1. The court may establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5354, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for their recommendation, if the court is satisfied that such comprehensive report or affidavit show the necessity for a temporary conservatorship.

Except as provided in this section, all temporary conservatorships shall expire automatically at the conclusion of 30 days, unless prior to that date the court shall conduct a hearing on the issue of whether or not the proposed conservatee is gravely disabled as defined in subdivision (h) of Section 5008. If the proposed conservatee demands a court or jury trial on the issue whether they are gravely disabled, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial, provided that such extension shall in no event exceed a period of six

months. At that point the temporary conservatorship will either be allowed to expire or the conservator will petition for a conservatorship, which would last for one year before needing dismissal for renewal.

Probate Conservatorship

The creation of a probate conservatorship (Probate Code, Section 1800, et seq) requires a court finding that there is "clear and convincing evidence" that the proposed conservatee lacks the mental capacity to do one or both of the following:

1. Provide for their personal needs for physical health, food, clothing or shelter
2. Manage their own financial resources or resist fraud or undue influence.

Process

Probate conservatorship is initiated by petition. Probate Code, Section 1820 lists persons authorized to file petitions. Generally, any adult (there are exceptions that are not relevant here) may petition to have a probate conservator appointed for themselves or for another person. A probate conservatorship continues until terminated by the death of the conservatee or by order of the court. The process for termination by court order begins with a petition. The court may revise the conservatee's disabilities and/or the conservator's powers to accommodate changes in life circumstances. The process for making revision begins with a petition.

- Probate Conservatorship with Dementia Powers:

This is not a new conservatorship, but is a traditional probate conservatorship with additional powers:

1. Used to avoid abuse of psychotropic medications and locked placements for dementia placements; provides vehicle by which "unique and special needs" of dementia patients can be met while preserving their basic dignity rights.
2. Allows conservator to place conservatee in a (a) secured perimeter residential care facility for the elderly operated pursuant to Health and Safety Code § 1569.698; or (b) a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to Health and Safety Code § 1569.691, and which has a care plan that meets the requirements of California Code of Regulations Title 22 § 87724.
3. Allows conservator to authorize the administration of medications appropriate for the care and treatment of dementia.

6500 Conservatorship for the Intellectually Disabled

The 6500 conservatorship is a limited Conservatorship designed for the Intellectually Disabled who require Regional Center assessment (Welfare and Institutions Code 6500). Diagnosis which fall into

the purview of Intellectual Disabilities includes intellectual disabilities, cerebral palsy, epilepsy, and autism. Additionally, the disability must originate before age 18.

Appendix C
WELFARE AND INSTITUTIONS CODE SECTION 5150-5155
(This is the actual text of the law)

5150. (a) 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 peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

(b) When determining if a person should be taken into custody pursuant to subdivision (a), the individual making that determination shall apply the provisions of Section 5150.05, and shall not be limited to consideration of the danger of imminent harm.

(c) The professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county shall assess the person to determine whether he or she can be properly served without being detained. If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, 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. Nothing in this subdivision shall be

interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under this section. Furthermore, the assessment requirement of this subdivision shall not be interpreted to require peace officers to perform any additional duties other than those specified in Sections 5150.1 and 5150.2.

(d) Whenever a person is evaluated by a professional person in charge of a facility designated by the county for evaluation or treatment, member of the attending staff, or professional person designated by the county and is found to be in need of mental health services, but is not admitted to the facility, all available alternative services provided pursuant to subdivision (c) shall be offered as determined by the county mental health director.

(e) If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or the professional person designated by the county, the person cannot be properly served without being detained, the admitting facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, and stating that the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county has probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled. The application shall also record whether the historical course of the person's mental disorder was considered in the determination, pursuant to Section 5150.05. If the probable cause is based on the statement of a person other than the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, the person shall be liable in a civil action for intentionally giving a statement that he or she knows to be false.

(f) At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or

the guardian or conservator of the person is in possession of the person's personal property, the person taking him or her into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him or her into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211, except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him or her into custody for that property shall terminate. As used in this section, "responsible relative" includes the spouse, parent, adult child, domestic partner, grandparent, grandchild, or adult brother or sister of the person.

(g) (1) Each person, at the time he or she is first taken into custody under this section, shall be provided, by the person who takes him or her into custody, the following information orally in a language or modality accessible to the person. If the person cannot understand an oral advisement, the information shall be provided in writing. The information shall be in substantially the following form:

My name is _____ .
I am a _____
(peace officer/mental health
_____ .
professional)
with _____ .
(name of agency)
You are not under criminal arrest, but I am
taking you for an examination by mental health
professionals at _____ .
_____
(name of facility)
You will be told your rights by the mental
health staff.

(2) If taken into custody at his or her own residence, the person shall also be provided the following information:

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.

(h) The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (g) which shall include all of the following:

(1) The name of the person detained for evaluation.

(2) The name and position of the peace officer or mental health professional taking the person into custody.

(3) The date the advisement was completed.

(4) Whether the advisement was completed.

(5) The language or modality used to give the advisement.

(6) If the advisement was not completed, a statement of good cause, as defined by regulations of the State Department of Health Care Services.

(i) (1) Each person admitted to a facility designated by the county for evaluation and treatment shall be given the following information by admission staff of the facility. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available to the person in English and in the language that is the person's primary means of communication. Accommodations for other disabilities that may affect communication shall also be provided. The information shall be in substantially the following form:

My name is _____.
My position here is_____.
You are being placed into this psychiatric facility because it is our professional opinion that, as a result of a mental health disorder, you are likely to (check applicable):
( ) Harm

yourself.
( ) Harm someone
else.
( ) Be unable to take care of your own food,
clothing, and housing
needs.
We believe this is true because
_____
(list of the facts upon which the allegation of dangerous
or gravely disabled due to mental health
disorder is based, including pertinent
facts arising from the admission interview).
You will be held for a period up to 72 hours.
During the 72 hours you may also be transferred
to another facility. You may request to be
evaluated or treated at a facility of your
choice. You may request to be evaluated or
treated by a mental health professional of your
choice. We cannot guarantee the facility or
mental health professional you choose will be
available, but we will honor your choice if we
can. During these 72 hours you will be evaluated by
the facility staff, and you may be given
treatment, including medications. It is
possible for you to be released before the end
of the 72 hours. But if the staff decides that
you need continued treatment you can be held
for a longer period of time. If you are held
longer than 72 hours, you have the right to a
lawyer and a qualified interpreter and a
hearing before a judge. If you are unable to
pay for the lawyer, then one will be provided
to you free of charge.
If you have questions about your legal rights,
you may contact the county Patients' Rights
Advocate at _____
(phone number for the county
_____.

Patients' Rights Advocacy office)
Your 72-hour period began _____.
(date/time)

(2) If the notice is given in a county where weekends and holidays are excluded from the 72-hour period, the patient shall be informed of this fact.

(j) For each patient admitted for evaluation and treatment, the facility shall keep with the patient's medical record a record of the advisement given pursuant to subdivision (i), which shall include all of the following:

(1) The name of the person performing the advisement.

(2) The date of the advisement.

(3) Whether the advisement was completed.

(4) The language or modality used to communicate the advisement.

(5) If the advisement was not completed, a statement of good cause.

5150.05. (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 Section 5328.

5150.1. No peace officer seeking to transport, or having transported, a person to a designated facility for assessment under Section 5150, shall be instructed by mental health personnel to take the person to, or keep the person at, a jail solely because of the unavailability of an acute bed, nor shall the peace officer be forbidden to transport the person directly to the designated facility. No mental health employee from any county, state, city, or any private agency providing Short-Doyle psychiatric emergency services shall interfere with a peace officer performing duties under Section 5150 by preventing the peace officer from entering a designated facility 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 purposes of this section also means a jailer seeking to transport or transporting a person in custody to a designated facility for assessment consistent with Section 4011.6 or 4011.8 of the Penal Code and Section 5150.

5150.2. In each county whenever a peace officer has transported a person to a designated facility for assessment under Section 5150, that officer shall be detained no longer than the time necessary to complete documentation of the factual basis of the detention under Section 5150 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 5105.

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 to the safe and orderly transfer of physical custody of persons under Section 5150, including those who have a criminal detention pending.

5150.4. "Assessment" for the purposes of this article, means the determination of whether a person shall be evaluated and treated pursuant to Section 5150.

5151. If the facility designated by the county for evaluation and treatment admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours. Saturdays, Sundays, and holidays may be excluded from the period if the State Department of Health Care Services certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days. The certification by the department is subject to renewal every two years. The department shall adopt regulations defining criteria for determining whether a facility can reasonably be expected to make evaluation and treatment services available on Saturdays, Sundays, and holidays.

Prior to admitting a person to the facility for treatment and evaluation pursuant to Section 5150, 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.

5152. (a) 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. However, in those 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 treatment relationship between the psychiatrist and 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. In the event of a clinical or professional disagreement regarding the early release of a person who has been placed under a 72-hour hold, the hold shall be maintained unless the facility's medical director overrules the decision of the psychiatrist or psychologist opposing the release. Both the psychiatrist and psychologist shall enter their findings, concerns, or objections into the person's medical record. If any other professional person who is authorized to release the person believes the person should be released before 72 hours have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 72 hours have elapsed only if the psychiatrist making the final decision believes, as a result of the psychiatrist's personal observations, that the person no longer requires evaluation or treatment.

(b) Any person who has been detained for evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for intensive treatment, or a conservator or temporary conservator shall be appointed pursuant to this part as required.

(c) A person designated by the mental health facility shall give to any person who has been detained at that facility for evaluation and treatment and who is receiving medication as a result of his or her mental illness, as soon as possible after detention, written and oral information about the probable effects and possible side effects

of the medication. The State Department of Health Care Services shall develop and promulgate written materials on the effects of medications, for use by county mental health programs as disseminated or as modified by the county mental health program, addressing the probable effects and the possible side effects of the medication. The following information shall be given orally to the patient:

(1) The nature of the mental illness, or behavior, that is the reason the medication is being given or recommended.

(2) The likelihood of improving or not improving without the medication.

(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.

The fact that the information has or has not been given shall be indicated in the patient's chart. If the information has not been given, the designated person shall document in the patient's chart the justification for not providing the information. A failure to give information about the probable effects and possible side effects of the medication shall not constitute new grounds for release.

(d) The amendments to this section made by Assembly Bill 348 of the 2003-04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

5152.1. The professional person in charge of the facility providing 72-hour evaluation and treatment, or his or her designee, shall notify the county behavioral 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 following 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.

5152.2. Each law enforcement agency within a county shall arrange with the county behavioral health director a method for giving prompt notification to peace officers pursuant to Section 5152.1.

5153. Whenever possible, officers charged with apprehension of persons pursuant to this article shall dress in plain clothes and travel in unmarked vehicles.

5154. (a) Notwithstanding Section 5113, if the provisions of Section 5152 have been met, the professional person in charge of the facility providing 72-hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section 5152, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released before the end of 72 hours pursuant to this article.

(b) The professional person in charge of the facility providing 72-hour treatment and evaluation, his or her designee, the medical director of the facility or his or her designee described in Section 5152, the psychiatrist directly responsible for the person's

treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released at the end of the 72 hours pursuant to this article.

(c) The peace officer responsible for the detainment of the person shall not be civilly or criminally liable for any action by a person released at or before the end of the 72 hours pursuant to this article.

(d) The amendments to this section made by Assembly Bill 348 of the 2003-04 Regular Session shall not be construed to revise or expand the scope of practice of psychologists, as defined in Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

5155. Nothing in this part shall be construed as granting authority to local entities to issue licenses supplementary to existing state and local licensing laws.

Appendix D
Minors: Voluntary Admission to Acute Inpatient Psychiatric Care

The statute clearly states a preference for the use of voluntary admission over involuntary admission when the patient is a minor. As a consequence of this stated preference, the LPS-designated clinician will be exploring the possibility of voluntary admission for every minor who meets criteria for civil commitment. The following section is designed to assist the clinician in determining when authorization is "not available." As a rule, a minor's voluntary admission to acute inpatient psychiatric care can only be executed by their parent, guardian, LPS-conservator or other person entitled to the minor's custody. The LPS-designated clinician should be able to identify:

1. Which persons are authorized by law to make application for voluntary admission on a minor's behalf, and
2. The legal impediments to successfully completing a minor's voluntary admission. The following sections define terms used to describe persons who may apply on the minor's behalf, present the special consideration given to minors 14 to 17 years of age, and describe the unique situation of minor wards and dependents in relation to voluntary admission.

Guardians and "other persons entitled to the minor's custody"

Statutes authorize parents, guardians and other persons entitled to the minor's custody to make voluntary application to acute inpatient psychiatric care on the minor's behalf. The LPS-designated clinician should know the following about guardians and other persons entitled to the minor's custody:

- The guardian referred to in the statutes that control the voluntary admission of minors is a court appointed decision maker. A person claiming to be a guardian should have documentation to support that claim.
- Other persons entitled to the minor's custody are persons given custody of the minor by the court. Persons claiming custody should have documentation to support that claim.
- A third type of person who might make application for a minor's voluntary admission to acute inpatient psychiatric care is a "relative caregiver." This person does not have formal custody of the minor, but may make decisions on the minor's behalf. The "relative caregiver" is also not a guardian, but their decision making power is akin to the powers vested in a guardian. This person is not granted power through a court proceeding. Instead, they generate their own authorization to make mental health decisions by filling out an affidavit. A caregiver who is a relative and who completes items 1-8 of the affidavit provided in Section 6552 and signs the affidavit shall have the same rights to authorize medical care and dental care for the minor that

are given to guardians under Section 2353 of the Probate Code. The medical care authorized by this caregiver who is a relative may include mental health treatment subject to the limitations of Section 2356 of the Probate Code. (Family Code 6550(a))

The affidavit includes the following affirmations:

( ) I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative"). Check one or both (for example, if one parent was advised and the other cannot
be located):

( ) I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

( ) I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

Persons claiming to be relative caregivers should be asked to produce this affidavit to support their claim.

Aged 14 to 17 to a "Private" Psychiatric Inpatient Facility

A set of statutes effecting the voluntary admission of minors 14 to 17 years of age to *private* acute inpatient psychiatric care is found in Welfare and Institutions Code, Section 6002.10 et seq. The goal of this set of statutes is two-fold:

1. To ensure that the parent/guardian authorizing the minor's admission is notified of the receiving facility's treatment philosophy, and
2. To provide an independent mechanism for investigating the legitimacy of the minor's admission.

The notice to the parent/guardian is automatic at the time of admission. The statutes that describe this notice have not been included in this manual. The independent investigation for determining the legitimacy of the minor's admission (a.k.a independent clinical review) is not conducted unless the minor requests it. The manual includes statutes that describe the minor who is eligible for an independent clinical review. The manual also provides the statute that describes the point at which the minor is made aware of their right to request the independent clinical review. Notice that the rights granted to the minor by this set of statutes do not prevent the voluntary admission from being completed.

Voluntary Admission Procedures for Minors Meeting Specified Criteria (Private Hospitals)

Welfare and Institutions Code, Section 6002.10

Any facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, to provide inpatient psychiatric treatment, excluding state hospitals, and county hospitals*****, shall establish admission procedures for minors who meet the following criteria:

(a) The minor is 14 years of age and over, and is under 18 years of age**.

(b) The minor is not legally emancipated*******

(c) The minor is not detained under Sections 5585.50 and 5585.53****

(d) The minor is not voluntarily committed pursuant to Section 6552 5*****

(e) The minor has not been declared a dependent of the juvenile court pursuant to Section 300 or a ward of the court pursuant to Section 602. The minor's admitting diagnosis or condition is either of the following:

(1) A mental health disorder only…

(2) A mental health disorder and a substance abuse disorder.

*excluding state hospitals, and county hospitals – This group of hospitals follows a procedure for admitting minors 14 to 17 years of age that is based on the CA Supreme Court case In Re Roger S.

**The minor is 14 years of age and over, and is under 18 years of age – The right to contest voluntary admission is not available to minors under 14 years of age.

***emancipated – An emancipated minor is treated as an adult. Minors become emancipated in one of three ways: 1) marriage, 2) military service, or 3) court order of emancipation resulting from the minor's request to be emancipated. Please note that bearing or siring a child does not emancipate a minor. An unmarried minor parent has the authority to make application for voluntary admission to inpatient psychiatric care for her child(ren), but cannot make voluntary application to inpatient psychiatric care for herself.

****The minor is not detained under Sections 5585.50 and 5585.53 – That is to say, the minor is not an involuntary patient.

*****Section 6552 – This Welfare and Institutions Code Section pertains to minor wards and dependents. It describes a court process used by minor wards and dependents who want to be admitted to inpatient or outpatient mental health treatment. Wards and dependents who want to be admitted to hospital have no need for a process to contest that admission.

Independent Clinical Review

(Private Hospitals, Welfare and Institutions Code, Section 6002.15)

Minors 14 to 17 have the right to contest voluntary admission to inpatient psychiatric treatment. When admitted a facility as specified in Section 6002.10 shall do all of the following:

1. Inform the minor in writing of the availability of an independent clinical review of their further inpatient treatment.
2. The notice shall be witnessed and signed by an appropriate representative of the facility.*

*Upon admission -- The point at which the minor is given the opportunity to request an independent clinical review to contest their admission is significant for the crisis intervention clinician. The fact that the opportunity comes after admission means that the right to contest does not prevent the admission from occurring. (See the following discussion for a situation that does create an impediment to a minor's voluntary admission to inpatient psychiatric care.)

If the minor chooses to contest the admission. [The choice is documented, staff contact all parties involved in the Review, the Review is held within five days.]

Voluntary Admission to Acute Inpatient Psychiatric Care, Minors Aged 14 to 17, to a Public/County Psychiatric Inpatient Facility

Special considerations regarding the voluntary admission of minors aged 14 to 17 (who are not wards or dependents) to public psychiatric facilities is derived from the 1977 California Supreme Court case, In Re Roger S (19 Cal. 3d 921). The considerations or rights granted to minors by Roger S are similar, but not identical, to the rights granted to minors admitted to private facilities.

For the LPS-designated clinician, the important difference between the private and public processes is the fact that In Re Roger S requires that the minor be notified of their right to contest the proposed voluntary admission (i.e., admission on the signature of a parent or guardian) before the admission can be completed. If the minor contests the proposed admission, they cannot be admitted to the facility on the signature of a parent or guardian; until a court hearing finds that the minor has a mental disorder and requires the proposed inpatient treatment. This court hearing may take several days to materialize.

The requirements derived from In Re Roger S clearly create an impediment to voluntary admission. It is important to remain clear about the fact that the impediment is to voluntary admission, not to involuntary admission. The line between voluntary admission and involuntary admission is easily blurred when the minor is contesting. "Voluntary admission" simply means that the admission is being authorized by the patient or the patient's agent (conservator, parent, or guardian). The fact that a parent or guardian is authorizing the minor's admission means that the minor is technically considered a "voluntary patient." The alternative to voluntary admission is an admission initiated by the State based on evidence that the person is dangerous to self, dangerous to others and/or gravely disabled (involuntary admission).

The requirements derived from In Re Roger S do not apply to the voluntary admission of minors 14 to 17 years of age who are wards or dependents. (See following section on wards and dependents.)

Roger S. Procedure

Welfare & Institutions Code, *Section* 6001.15 et seq.

The Roger S. Hearing is designed to allow minors to contest voluntary admission to inpatient psychiatric treatment. Upon advisement, prior to admission, that eligible minors must be advised of option to contest their involuntary admission with the following options:

1. The minor chooses not to contest the admission. [The choice is documented, and the minor is advised that they may change their mind at any time within the next ten days.]
2. The minor chooses to contest the admission. [The choice is documented, staff initiate contact with the court, the Hearing is held at earliest convenience.]
    a. *In private facilities:* The choice to contest has no immediate effect on the admission, as the minor has already been admitted.
    b. *In public facilities*: The choice to contest stalls the proposed voluntary admission. This contesting minor may not be admitted into a public psychiatric hospital using the voluntary admission process unless the Roger S. Hearing upholds the necessity of the minor's admission.

Voluntary Admission to Acute Inpatient Psychiatric Care for Minor Wards and Dependents

Definitions

Ward: is a minor who has come within the jurisdiction of the juvenile court because they have violated a city ordinance, county ordinance or criminal statute; or because they are considered to be beyond the control of their parent, guardian, or other custodian. (For more information on this topic consult Welfare and Institutions Code, Section 601 et seq.)

Dependent: is a minor who has come within the jurisdiction of the juvenile court because they have suffered abuse by a parent or guardian or is considered to be at significant risk of suffering abuse by a parent or guardian.

Acute Care for Wards and Dependents

Wards and dependents can enter acute inpatient psychiatric care in one of two ways:

1. On an application for civil commitment (5585), or
2. Upon their own request (6552).

The juvenile court may request that the ward or dependent be evaluated for civil
Commitment, but the court is not authorized to require that the minor be admitted to acute inpatient psychiatric care. Also note the following:

Probation and parole officers are authorized by statute to initiate applications (5585) for civil commitment of wards under their charge. Foster parents do not have authority to make an application for the dependents voluntary admission to inpatient psychiatric care. Department of Children and Family Services (DCFS) employees do not have authority to make voluntary application to inpatient psychiatric care on behalf of wards or dependents, and, at present, DCFS clinicians are not authorized by statute or the county to initiate applications for civil commitment. Wards and dependents do not need the protections provided by the independent clinical review statutes or the case of In Re Roger S because the ward/dependent is given direct control of the voluntary admission process by Welfare and Institutions Code, Section 6552, which reads, as follows:

> A minor who has been declared to be within the jurisdiction of the juvenile court may, with the advice of counsel, make voluntary application for inpatient or outpatient mental health services in accordance with Section 5003. Notwithstanding the provisions of subdivision (b) of Section 6000, Section 6002, or Section 6004, the juvenile court may authorize the minor to make such application if it is satisfied from the evidence before it that the minor suffers from a mental disorder which may reasonably be expected to be cured or ameliorated by a course of treatment offered by the hospital, facility or program in which the minor wishes to be placed; and that there is no other available hospital, program, or facility which might better serve the minor's medical needs and best interest. The superintendent or person in charge of any state, county, or other hospital facility or program may then receive the minor as a voluntary patient.

This potentially slow “6552” process is an impractical method for obtaining admission to acute inpatient psychiatric care, but it is commonly used to gain admission to other types of inpatient/residential mental health treatment.

Appendix E
Emergency room 24-hour rule

This section explains the extension of the emergency room eight-hour rule for general medical emergency rooms that had been passed in 1997. LPS Designated facilities within Santa Clara County are expected to provide an assessment for a 5150 within one hour. In Santa Clara County, the following rule applies only to non-LPS designated hospitals. Effective January 1, 2008, SB 916 provides immunity to (non-LPS designated) medical emergency rooms for detaining individuals who present as danger to self, others, or are gravely disabled due to a mental disorder for up to 24 hours while emergency room staff seek a psychiatric bed for the individual. SB 916 states that hospitals and staff shall not be civilly or criminally liable for detention up to 24 hours as long as the following are met:

1. The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to themselves, or others, or is gravely disabled.
2. The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.
3. The person is not detained beyond 24 hours.
4. There is probable cause for the detention.

If the person is detained beyond eight hours, but less than 24 hours, the following additional conditions shall be met:

(a) A transfer for appropriate mental health treatment for the person has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.

(b) In the opinion of the treating physician and surgeon, or a clinical psychologist with medical staff privileges or professional responsibilities provided for in Section 1316.5, the person, as a result of a mental health condition, is still a danger to themselves, or others, or is gravely disabled.

In addition to the conditions set forth in subdivision (a), a licensed acute psychiatric hospital, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals shall not be civilly or criminally liable for the actions of a person detained up to 24 hours in those hospitals who is subject to detention pursuant to Section 5150 of the Welfare and Institutions Code after that person's release from the detention at the hospital, if all of the following conditions exist during the detention:

1. The person has not been admitted to a licensed general acute care hospital or a licensed acute

psychiatric hospital for evaluation and treatment pursuant to Section 5150 of the Welfare and Institutions Code.

2. The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with medical staff privileges or professional responsibilities who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to themselves or others and is not gravely disabled. In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after they has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.
3. Nothing in this section shall affect the responsibility of a general acute care hospital or an acute psychiatric hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.
4. A person detained under this section shall be credited for the time detained, up to 24 hours, in the event they are placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code. There are no forms or formal applications for this rule. This rule applies only to persons who are detained; voluntary patients are not held against their will, so we do not record any time of detainment.

Appendix F
24-Hour Rule
HEALTH AND SAFETY CODE
SECTION 1799.100-1799.112
(This is the actual text of the law)

1799.100. In order to encourage local agencies and other organizations to train people in emergency medical services, no local agency, entity of state or local government, private business or nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2 of the Government Code, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, or certifies those people, excluding physicians and surgeons, registered nurses, and licensed vocational nurses, as defined, in emergency medical services, shall be liable for any civil damages alleged to result from those training programs.

1799.102. (a) No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This subdivision applies only to the medical, law enforcement, and emergency personnel specified in this chapter.

(b) (1) It is the intent of the Legislature to encourage other individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.

(2) Except for those persons specified in subdivision (a), no person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency shall be liable for civil damages resulting from any act or omission other than an act or omission constituting gross negligence or willful or wanton misconduct. The scene of an emergency shall not

include emergency departments and other places where medical care is usually offered. This subdivision shall not be construed to alter existing protections from liability for licensed medical or other personnel specified in subdivision (a) or any other law.

(c) Nothing in this section shall be construed to change any existing legal duties or obligations, nor does anything in this section in any way affect the provisions in Section 1714.5 of the Civil Code, as proposed to be amended by Senate Bill 39 of the 2009-10 Regular Session of the Legislature.

(d) The amendments to this section made by the act adding subdivisions (b) and (c) shall apply exclusively to any legal action filed on or after the effective date of that act.

1799.103. (a) An employer shall not adopt or enforce a policy prohibiting an employee from voluntarily providing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, in response to a medical emergency, except as provided in subdivisions (b) and (c).

(b) Notwithstanding subdivision (a), an employer may adopt and enforce a policy authorizing employees trained in emergency services to provide those services. However, in the event of an emergency, any available employee may voluntarily provide emergency medical services if a trained and authorized employee is not immediately available or is otherwise unable or unwilling to provide emergency medical services.

(c) Notwithstanding subdivision (a), an employer may adopt and enforce a policy prohibiting an employee from performing emergency medical services, including, but not limited to, cardiopulmonary resuscitation, on a person who has expressed the desire to forgo resuscitation or other medical interventions through any legally recognized means, including, but not limited to, a do-not-resuscitate order, a Physician Orders for Life Sustaining Treatment form, an advance health care directive, or a legally recognized health care decision maker.

(d) This section does not impose any express or implied duty on an employer to train its employees regarding emergency medical services or cardiopulmonary resuscitation.

1799.104. (a) No physician or nurse, who in good faith gives emergency instructions to an EMT-II or mobile intensive care paramedic at the scene of an emergency, shall be liable for any civil damages as a result of issuing the instructions.

(b) No EMT-II or mobile intensive care paramedic rendering care within the scope of his duties who, in good faith and in a nonnegligent manner, follows the instructions of a physician or nurse shall be liable for any civil damages as a result of following such instructions.

1799.105. (a) A poison control center which (1) meets the minimum standards for designation and operation established by the authority pursuant to Section 1798.180, (2) has been designated a regional poison control center by the authority, and (3) provides information and advice for no charge on the management of exposures to poisonous or toxic substances, shall be immune from liability in civil damages with respect to the emergency provision of that information or advice, for acts or omissions by its medical director, poison information specialist, or poison information provider as provided in subdivisions (b) and (c).

(b) Any poison information specialist or poison information provider who provides emergency information and advice on the management of exposures to poisonous or toxic substances, through, and in accordance with, protocols approved by the medical director of a poison control center specified in subdivision (a), shall only be liable in civil damages, with respect to the emergency provision of that information or advice, for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. This subdivision shall not be construed to immunize the negligent adoption of a protocol.

(c) The medical director of a poison control center specified in subdivision (a) who provides emergency information and advice on the management of exposures to poisonous or toxic substances, where the exposure is not covered by an approved protocol, shall be liable only in civil damages, with respect to the emergency provision of that information or advice, for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. This subdivision shall neither be construed to immunize the negligent failure to adopt adequate approved protocols nor to confer liability upon the medical director for failing to develop or approve a protocol when the development of a protocol for a specific situation

is not practical or the situation could not have been reasonably foreseen.

1799.106. (a) In addition to the provisions of Section 1799.104 of this code, Section 2727.5 of the Business and Professions Code, and Section 1714.2 of the Civil Code, and in order to encourage the provision of emergency medical services by firefighters, police officers or other law enforcement officers, EMT-I, EMT-II, EMT-P, or registered nurses, a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse who renders emergency medical services at the scene of an emergency or during an emergency air or ground ambulance transport shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. A public agency employing such a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse shall not be liable for civil damages if the firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse is not liable.

(b) For purposes of this section, "registered nurse" means a registered nurse trained in emergency medical services and licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence. This presumption shall be one

affecting the burden of proof.

(d) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a private fire department, whether that person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing emergency services as defined by subdivision (e).

(e) For purposes of this section, "emergency services" includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril.

1799.108. Any person who has a certificate issued pursuant to this division from a certifying agency to provide prehospital emergency field care treatment at the scene of an emergency, as defined in Section 1799.102, shall be liable for civil damages only for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith.

1799.110. (a) In any action for damages involving a claim of negligence against a physician and surgeon arising out of emergency medical services provided in a general acute care hospital emergency department, the trier of fact shall consider, together with all other relevant matters, the circumstances constituting the emergency, as defined herein, and the degree of care and skill ordinarily exercised by reputable members of the physician and surgeon's profession in the same or similar locality, in like cases, and under similar emergency circumstances.

(b) For the purposes of this section, "emergency medical services" and "emergency medical care" means those medical services required for the immediate diagnosis and treatment of medical conditions which, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death.

(c) In any action for damages involving a claim of negligence against a physician and surgeon providing emergency medical coverage for a general acute care hospital emergency department, the court

shall admit expert medical testimony only from physicians and surgeons who have had substantial professional experience within the last five years while assigned to provide emergency medical coverage in a general acute care hospital emergency department. For purposes of this section, "substantial professional experience" shall be determined by the custom and practice of the manner in which emergency medical coverage is provided in general acute care hospital emergency departments in the same or similar localities where the alleged negligence occurred.

1799.111. (a) Subject to subdivision (b), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital, as defined in subdivision (b) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital shall not be civilly or criminally liable for detaining a person if all of the following conditions exist during the detention:

(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs for food, clothing, or shelter.

(2) The hospital staff, treating physician and surgeon, or appropriate licensed mental health professional, have made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the person.

(A) Telephone calls or other contacts required pursuant to this paragraph shall commence at the earliest possible time when the treating physician and surgeon has determined the time at which the person will be medically stable for transfer.

(B) In no case shall the contacts required pursuant to this paragraph begin after the time when the person becomes medically stable for transfer.

(3) The person is not detained beyond 24 hours.
(4) There is probable cause for the detention.
(b) If the person is detained pursuant to subdivision (a) beyond eight hours, but less than 24 hours, both of the following additional conditions shall be met:
(1) A discharge or transfer for appropriate evaluation or treatment for the person has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.
(2) In the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, the person, as a result of a mental disorder, is still a danger to himself or herself, or others, or is gravely disabled, as defined in paragraph (1) of subdivision (a).
(c) In addition to the immunities set forth in subdivision (a), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250 that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital as defined by subdivision (b) of Section 1250 that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital shall not be civilly or criminally liable for the actions of a person detained up to 24 hours in those hospitals who is subject to detention pursuant to subdivision (a) after that person's release from the detention at the hospital, if all of the following conditions exist during the detention:
(1) The person has not been admitted to a licensed general acute care hospital or a licensed acute psychiatric hospital for evaluation and treatment pursuant to Section 5150 of the Welfare and Institutions Code.
(2) The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to himself or herself or others and is not gravely disabled, as defined in paragraph (1) of subdivision (a). In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and

surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after he or she has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.

(d) Nothing in this section shall affect the responsibility of a general acute care hospital or an acute psychiatric hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(e) A person detained under this section shall be credited for the time detained, up to 24 hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

(f) The amendments to this section made by the act adding this subdivision shall not be construed to limit any existing duties for psychotherapists contained in Section 43.92 of the Civil Code.

(g) Nothing in this section is intended to expand the scope of licensure of clinical psychologists.

1799.112. (a) EMT-P employers shall report in writing to the local EMS agency medical director and the authority and provide all supporting documentation within 30 days of whenever any of the following actions are taken:

(1) An EMT-P is terminated or suspended for disciplinary cause or reason.

(2) An EMT-P resigns following notice of an impending investigation based upon evidence indicating disciplinary cause or reason.

(3) An EMT-P is removed from paramedic duties for disciplinary cause or reason following the completion of an internal investigation.

(b) The reporting requirements of subdivision (a) do not require or authorize the release of information or records of an EMT-P who is also a peace officer protected by Section 832.7 of the Penal Code.

(c) For purposes of this section, "disciplinary cause or reason"

means only an action that is substantially related to the qualifications, functions, and duties of a paramedic and is considered evidence of a threat to the public health and safety as identified in subdivision (c) of Section 1798.200.

(d) Pursuant to subdivision (i) of Section 1798.24 of the Civil Code, upon notification to the paramedic, the authority may share the results of its investigation into a paramedic's misconduct with the paramedic's employer, prospective employer when requested in writing as part of a pre-employment background check, and the local EMS agency.

(e) The information reported or disclosed in this section shall be deemed in the nature of an investigative communication and is exempt from disclosure as a public record by subdivision (f) of Section 6254 of the Government Code.

(f) A paramedic applicant or licensee to whom the information pertains may view the contents, as set forth in subdivision (a) of Section 1798.24 of the Civil Code, of a closed investigation file upon request during the regular business hours of the authority.

Appendix G
5150 Card Quality Improvement Committee

Should the Santa Clara County Director of Behavioral Health withdraw his or her designation of a facility and the facility were to lose its LPS designation all those authorized by the county, who work under the umbrella of the previously designated facility, are no longer eligible to write 5150 holds. However, any individuals who are authorized to write holds at other facilities can continue to do so at other approved facilities, but not at the undesignated facility. The Behavioral Health Director and the undesignated facility can enter into a letter of agreement about the facility being authorized to write 5150 holds without LPS designation. Please refer to the LPS Designation Guidelines and Process for Facilities within Santa Clara County for the Process of revoking and LPS designation.

Individual 5150 card holders can and must surrender their cards and cease to write holds if asked to do so by the Behavioral Health Services Director or their designated representative. The county reserves the right to revoke any 5150 card without explanation at any time. If it is found that individuals are writing holds without proper authorization and training, the county will notify the individual and their supervisor of the training process in writing. The county will include the fact that it is considered false imprisonment to detain someone without legal authority.

The QI 5150 review committee shall meet four times per year to review 5150 holds, which have been brought to the attention of the county. This committee will consist of a member of Mental Health Advocacy Project, the 5150 coordinator, the manager of QI, and the Behavioral Health Services Director or their representative. If 5150 holds are found to be of concern, after careful review, letters of notification will be sent to the director of facilities and the writer of the hold notifying them of the hold and the concern noted by the committee.

Appendix H
Frequently Asked Questions

The following section presents short answers to questions frequently asked by designated clinicians. Questions and answers are loosely grouped by theme. The order in which the questions are provided is not a reflection of their relevance or an indication of how often the question arises.

Test Results and Card

How will I know I passed the exam?
A: You will receive an email within two weeks of completing the exam if you do not pass. Those who pass the exam will be mailed a card approximately two months after the training. The email address used to contact you will be the one you indicated on the signup form. If that email has changed, please indicate that on the sign in sheet for the class. The contact email on the sign in sheet will override that on the application form.
What can I do if I do not pass the exam?
A: You may retake the exam the next time the class is given. A passing score is 80 percent or better.
When will I receive my card?
A: You will receive your card in a self-addressed envelope in the mail, card approximately two months after passing the exam.
Can I write holds if I know I passed the exam?
A: No, you must have a valid 5150 card to write holds. The reason for this, is that the law allows only those with permission of the Behavioral Health Director of the County to write hold. Consequently, the signature on the card you receive is your permission. You cannot write holds until you have received your card, unless you still have another valid card to use.
What if I move from one agency to another?
A: The County allows those who change organizations to transfer their 5150 card writing privileges without retaking the class. Please notify at LP5150@hhs.sccgov.org that you have changed agencies and attach a new application form. Of course, both agencies must be authorized 5150 writing places by the county.
What if I work at two different agencies where 5150 holds are allowed to be written?
A: Please complete two application forms for both agencies and send them in together when you sign up for the class.

5150 Document Questions

May I write the 5150 in pencil?

A: There is no statutory instruction on what medium to use to complete the 5150 document. Prudence suggests that it be written in ink to dissuade ambulance and hospital personnel from making changes.

Q: **After I complete a 5150, may I decide against pursuing the patient's detention?**

A: Yes. The statutes say that an application "may" be written on a person who meets criteria. The statutes do not say that an application must be written on a person who meets criteria. Therefore, the author has discretion to pursue or not to pursue the detention. If the author chooses not to pursue the detention after an application has been created, she simply destroys the application.

Q: **My facility is almost out of the 5150 documents printed by the State. Can we make copies of one of the remaining blank forms and use those copies as our originals?**

A: Yes. The statutes expect that specific types of information will be provided by the author of the 5150 (Sections 5150 and 5157). We use the State form because it prompts the author to provide this required information (side one). A photocopy of the State form would, obviously, serve the same function. If it is OK to use copies of the State form, the next question might be: Does the copy have to include side two? Side two of the State form simply contains definitions and instructions germane to side one. While it may be prudent to include these instructions on each copy, an application is not made invalid by the fact that side two is blank.

Restraint Use

Q: **I have written an application in the community. May I physically restrain the patient of that application to ensure that they does not run away?**

A: Individual LPS-designation authority does not give the clinician the authority to lay hands on or restrain the patient of an application. The clinician's first choice for assistance in this situation is a peace officer, who has been CIT trained. Clinicians should be aware of the fact that policies related to the conditions under which an officer might participate in the apprehension of a patient on the run are likely to be different for each law enforcement agency, and might even differ by region.

Q: **I have written an application in the community. May I physically restrain the patient of that application if they are combative?**

A: Individual LPS-designation authority does not give the clinician the authority to lay hands on or otherwise restrain the patient of an application. The clinician's first choice for assistance in this situation is a peace officer, but there will be times when ambulance personnel might be willing to assist the clinician with a combative patient. The difficulty for the clinician rests in deciding how to manage the combative patient before police and/or ambulance personnel arrive at the scene.

Q: **I have written an application in the community. May I use physical force to defend myself against the patient if they attacks me?**

A: The clinician may use reasonable force to protect themselves against physical attack, but prudence suggests that avoiding an attacker is better than engaging an attacker.

Flight

Q: **I have written an application in the community. The patient has run away from me. Must they be retrieved?**
A: The statutes say that an application "may" be written on a person who meets criteria. The statutes do not say that an application must be written on a person who meets criteria. Therefore, the author has discretion to pursue or not to pursue the detention. It is possible that liability concerns will argue in favor of having the patient apprehended. In very general terms, the liability solution will depend on the degree to which the patient poses a risk to self or others. (Not all persons who meet criteria for an application are dangerous to the same degree.) All questions regarding clinician liability should be directed to counsel.

Medical Patients

Q: **May I initiate an application if the patient is receiving medical care on a medical/surgical unit?**
A: Yes. Designation authority may be exercised in any setting. If transfer to a designated facility is required, extreme care must be taken to identify and accommodate the patient's on-going medical needs. The best scenario is one in which the patient's treating physician takes responsibility for communicating the patient's condition and ongoing medical needs to the destination hospital.
Q: **I am performing a 5150 evaluation on a medical patient. The charge nurse tells me that the patient is stable for transfer. What does "stable for transfer" mean?**
A: "Stable for transfer" simply means that the patient's medical condition will likely not deteriorate en route to the next facility. This phrase communicates nothing about the patient's on-going medical needs.