DAVIS POLICE DEPARTMENT

MENTAL HEALTH COMMITMENTS
Policy and Procedure 2.19-C

DEPARTMENT MANUAL

I. POLICY

This policy provides guidelines for interacting with those who may be experiencing a mental health or emotional crisis. Interaction with such individuals has the potential for miscommunication and violence. It often requires an officer to make difficult judgments about a person’s mental state and intent in order to effectively and legally interact with the individual.

It is the policy of the Davis Police Department to protect the public and individuals through legal and appropriate use of the 72-hour treatment and evaluation commitment (Welfare and Institutions Code (W&I) § 5150) process.

An officer having probable cause may take a person into custody and place the person in an approved mental health facility for 72-hour treatment and evaluation when the officer believes that, as a result of a mental disorder, the person is a danger to him/herself or others or the person is gravely disabled (W&I §§ 5150 & 5585.50).

When determining whether to take a person into custody, officers are not limited to determining the person is an imminent danger and shall consider reasonably available information about the historical course of the person’s mental disorder, which may include evidence presented from any of the following (W&I §§ 5150 & 5150.05):

- An individual who is providing or has provided mental health treatment or related support services to the person
- A family member
- The person subject to the determination or anyone designated by the person

The Davis Police Department is committed to providing a consistently high level of service to all members of the community and recognizes that persons in crisis may benefit from intervention.

The Department will collaborate, where feasible, with mental health professionals to develop an overall intervention strategy to guide its members’ interactions with those experiencing a mental health crisis. This is to ensure equitable and safe treatment of all involved.

Any force used to take a person into custody shall be in compliance with PP 3.05-A, Use of Force.

Sutter Davis Hospital, Woodland Memorial Hospital, and the UC Davis Medical Center are all approved to accept a person on a W&I § 5150 commitment.
II. PROCEDURE

W&I § 5150 states when any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by W&I § 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

Probable Cause

Peace officers and § 5150 designated professional persons must make a face-to-face evaluation of an individual as part of the overall determination as to whether that individual meets § 5150 criteria. The § 5150 designated person must have probable cause to believe that, as the result of a mental disorder, the subject is a danger to self and/or others, and/or gravely disabled.

To constitute probable cause to detain a person pursuant to § 5150, a set of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion.

In other words, the § 5150 designee must be able to identify specific information that would cause any reasonable person to believe or strongly suspect that the subject of the § 5150 has a mental disorder which, at present, results in behavior indicating dangerousness to self, and/or others, and/or grave disability.

The specific information considered in the § 5150 process is not limited to the direct observation of the designated person. It is not necessary that the designated person have independent firsthand knowledge of information offered by third parties. Information relied upon may be that made available by other persons, including the person being considered for § 5150, someone they designate, caregivers, and family.

When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to § 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. (W&I § 5150.05(a))

Mental disorder

Persons may be detained and transported pursuant to a § 5150 upon probable cause that the person has a mental disorder which currently results in behavior that is dangerous to self and/or others, and/or constitutes grave disability.

The designee is not required to make a medical diagnosis of the mental disorder. The term “mental disorder” is not defined in the Welfare and Institutions Code. The statutory language of Welfare and Institutions Code § 5150, and the State created form used are the same whether the § 5150 is written by law enforcement or a clinician. The § 5150 is a mechanism to present a person to the appropriate venue where clinical activities such as diagnosis, examination, treatment and evaluation can occur.
For purposes of the § 5150, the mental disorder is established by statements that “articulate behavioral symptoms of mental disorder either temporary or prolonged.”

The designee should look for and document words, actions and/or emotional affect that are inappropriate, unusual or bizarre for the circumstances to support probable cause to believe the person may have a mental disorder.

A history of a mental disorder alone is not sufficient to establish a connection between condition and behavior. A person with a mental disorder may find they are unable to provide for food, clothing and shelter for reasons unrelated to their mental disorder, such as the loss of a job, or a recent divorce. Similarly, dangerousness to self or others or an inability to provide food, clothing and shelter without a mental disorder is not enough. Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder. (W&I §5585.25)

Criteria
There are three separate criteria available as the basis for detention and transport pursuant to § 5150: danger to self, danger to others, and gravely disabled. The designee must find that the subject of the § 5150 meets at least one of the three.

In determining criteria, a connection must be established between the information supporting existence of a mental disorder and the indications or evidence of dangerousness to self and/or others and/or grave disability as a result of the mental disorder. The documentation presented on the § 5150 form must establish this connection and support the criteria selected.

Danger to Self
What constitutes a “danger to self” is not defined. Therefore, there is no legal requirement for “intent” in order to find probable cause that a person is a danger to himself or herself as a result of a mental disorder. Some examples of what might constitute a danger to self as a result of a mental disorder may include, but are not limited to:

- Intentional acts of self-harm
- Statements of intent or plan for self-harm
- Behaviors that place a person in harm’s way
- Symptoms that increase the likelihood of dangerousness
- In some circumstances, refusal of medical treatment or care due to a mental disorder (however, involuntary detentions may not be used to authorize non-psychiatric medical treatment)

Danger to Others
What constitutes a “danger to others” is not defined. Therefore, there is no legal requirement for “intent” in order to find probable cause that a person is a danger to others as a result of a mental disorder. Some examples of what might constitute a danger to others as a result of a mental disorder may include, but are not limited to:

- Intentional acts of harm to others
- Statements of intent or plan for harm to others
- Behaviors that are dangerous to others
- Symptoms that create the likelihood of dangerousness
Probable cause to believe that a person is dangerous to others as a result of a mental disorder may be based on actions that are likely to cause harm to another. As with dangerousness to self, it is not necessary that the person have actually caused harm to another person.

A history of violence towards others may be considered in determining dangerousness. The more recent the dangerous behavior, the greater the consideration given. And again, there must be a connection between the dangerousness and a mental disorder.

Dangerousness or threats towards property alone does not necessarily equate to dangerousness towards others.

Probable cause for dangerousness may be based on the combination of several behaviors and factors that the designee believes are the result of a mental disorder.

Gravely Disabled
Welfare and Institutions Code § 5008(h)(1) (A) defines the term “gravely disabled” as a condition in which a person is unable to provide for his or her basic personal needs for food, clothing, or shelter as a result of a mental disorder.

A person is not gravely disabled if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.

A gravely disabled minor is a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter even though provided to the minor by others. (W&I § 5008(l))

The term “gravely disabled” does not include mentally retarded persons by reason of being mentally-retarded alone. (W&I § 5008 (h))

In making a determination of grave disability, it is not necessary that a person be unable to provide for all of the three basic needs, i.e. food, clothing or shelter. Inability to provide for one of the three basic needs, as the result of a mental disorder, is sufficient.

Note that probable cause for grave disability may never be based solely on refusal to accept mental health treatment.

The examples below may be helpful guidelines in determining grave disability:

<table>
<thead>
<tr>
<th>FOOD</th>
<th>CLOTHING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adequate knowledge of nutritional needs. Appears adequately nourished. Able to explain the manner by which he/she obtains food—prepares own meals or prepared by third party.</td>
<td>Unable to distinguish between food and non-food items. No food available or food is spoiled. Appears inadequately nourished. Denies/ unaware of need for food. Unable to explain how he/she obtains food.</td>
</tr>
<tr>
<td>Manner of dress is appropriate to season, temperature, physical limitations, culture and/or religion.</td>
<td>Public nudity or inadvertent exhibitionism. Uses non clothing items to cloth self. Destroying, giving away or discarding clothing without recall of or reason for doing so and/or resulting in inability to clothe self appropriately.</td>
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A. Officer Considerations

Any officer handling a call involving an individual who may qualify for a W&I § 5150 commitment should consider, as time and circumstances reasonably permit:

- Available information that might assist in determining the cause and nature of the person’s action or stated intentions.
- Community or neighborhood mediation services.
- Conflict resolution and de-escalation techniques.
- Community or other resources available to assist in dealing with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

Officers should consider a W&I § 5150 commitment over arrest when mental health issues appear to be a mitigating factor for people who are suspected of committing minor non-violent crimes or creating other minor public safety issues.

B. Voluntary Evaluation

If officers encounter an individual who may qualify for a W&I § 5150 commitment, they may inquire as to whether the person desires to voluntarily be evaluated at an appropriate facility. If the person so desires, the officers should:

1. Transport the person to an appropriate medical facility that is able to conduct the evaluation and admit the person pursuant to a W&I § 5150 commitment.

2. If at any point the person changes their mind regarding voluntary evaluation, officers should proceed with the W&I § 5150 commitment, if appropriate.

3. Document in a Miscellaneous Service Report the circumstances surrounding the individual’s desire to pursue voluntary evaluation and/or admission.

C. Required Advisement

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

1. The officer’s name and agency.
2. The fact that the person is not under criminal arrest, but is being taken for examination by mental health professionals.
3. The name of the facility to which the person is being taken.
4. If the person is being taken into custody at his/her residence, he/she should also be advised that he/she may take a few personal items – which the officer must approve – and may make a telephone call or leave a note indicating where he/she is being taken. The officer should also ask if the person needs assistance turning off any appliance or water.

The advisement shall be given in a language the person understands. If the person cannot understand an oral advisement, the information shall be provided in writing (W&I § 5150(f)(1)).

D. Securing of Property

When a person is taken into custody for evaluation, or within a reasonable time thereafter, and unless a responsible relative, guardian or conservator is in possession of the person’s personal property, the officer shall take reasonable precautions to safeguard the individual’s personal property in his/her possession or on the premises occupied by the person (W&I § 5150).

The officer taking the person into custody shall provide a report to the court that describes the person’s property and its disposition in the format provided in W&I § 5211, unless a responsible person took possession of the property, in which case the officer shall only include the name of the responsible person and the location of the property (W&I § 5150).

E. Medical Evaluation

1. Persons taken into custody on a W&I § 5150 commitment generally require immediate medical attention and should be transported to the nearest emergency room, which is Sutter Davis Hospital. The hospital should be notified when a person is being transported to their facility. On rare occasions the emergency room may be unable to accept the patient, in which case Woodland Memorial should be used. Both Sutter Davis and Woodland Memorial are prohibited by law from being closed at the same time.

2. Transportation can be by police car or ambulance, although an ambulance should be used if on-going medical aid is needed. If an ambulance is used the officer shall trail it to the hospital.

3. During transportation, restraints should be used when necessary or in those situations where the person is exhibiting or has exhibited behavior deemed to be a physical danger to themselves or others. Persons requiring restraints other than handcuffs should be transported by ambulance. Handcuffs should be replaced by another method of restraint if the patient is transported in an ambulance. If the person is to be transported in metal handcuffs, an officer must ride along in the patient compartment of the ambulance, should the ambulance crew make the request.

4. The officer will fill out a “5150 W&I” form and give it to hospital staff. Officers shall remain at the hospital long enough for the facility to establish physical control of the patient. Physical control is defined as when the individual is secured to a hospital stretcher or medicated sufficiently to control behavior. Unless there are extenuating or extraordinary circumstances, the transfer time shall not exceed 20 minutes.

5. Absent exigent circumstances, the transporting officer should not assist facility staff with the admission process, including restraint of the individual in the hospital. However, if the individual is transported and delivered while restrained, the officer may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, officers will not apply facility-ordered restraints.
6. In the event that the patient will be released or transferred, hospital or mental health staff will make arrangements for transportation.

F. Criminal Offenses

Officers investigating an individual who is suspected of committing a minor non-violent criminal offense and who is being taken on a W&I § 5150 commitment should resolve the criminal matter by issuing a warning or a Notice-to-Appear as appropriate.

When an individual who may qualify for a W&I § 5150 commitment has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:

1. Arrest the individual when there is probable cause to do so.
2. Notify the Watch Commander of the facts supporting the arrest and the facts that would support the W&I § 5150 commitment.
3. Facilitate the individual’s transfer to jail.
4. Thoroughly document in the related reports the circumstances that indicate the individual may qualify for a W&I § 5150 commitment.

In the Watch Commander’s judgment, the individual may be arrested or booked and transported to the appropriate mental health facility. The Watch Commander should consider the seriousness of the offense, the treatment options available, the ability to regain custody of the individual, Department resources (e.g., posting a guard) and other relevant factors in making this decision.

G. Firearms

1. Pursuant to W&I § 8102(a), whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in §§ 8100 or 8103, is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by a peace officer, who shall retain custody of the firearm or other deadly weapon. “Deadly weapon” has the meaning prescribed by W&I § 8100.

2. Officers are cautioned that a search warrant may be needed before entering a residence to search unless lawful, warrantless entry has already been made (e.g., exigent circumstances, valid consent).

3. Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the officer shall notify the person of the procedure for the return of any firearm or other deadly weapon which has been confiscated. Where the person is taken and held at a hospital, the officer shall notify the facility that a firearm or deadly weapon was confiscated. When the person is released, the person in charge of the facility that releases the person, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated. Health facility personnel shall notify Davis PD upon release of the detained person. The person taking the information regarding the release shall notify the Investigations Sergeant as soon as possible about the release.

4. Upon the release of the person, the Department shall have 30 days, unless good cause is shown, to initiate a petition in the Superior Court for a hearing to determine whether the return
of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue. The Investigations Sergeant shall be responsible for making this determination and contacting the District Attorney to initiate proceedings.

5. The Investigations Sergeant, or their designee, shall inform the person that he or she has 30 days to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond will result in a default order forfeiting the confiscated firearm or weapon. For the purpose of this subdivision, the person's last known address shall be the address provided to the law enforcement officer by the person at the time of the person's detention or apprehension.

6. If the person responds and requests a hearing, the court clerk shall set a hearing, no later than 30 days from receipt of the request. The court clerk shall notify the person and the District Attorney of the date, time, and place of the hearing.

7. If the person does not respond within 30 days of the notice, the Department may file a petition for order of default.

8. If the Department does not initiate proceedings within the 30-day period, it shall make the weapon available for return.

H. Reports

An officer who takes a person into custody on a W&I § 5150 commitment shall complete a report in RIMS with a narrative describing in detail the circumstances surrounding the detention. A copy of the 5150 form shall be scanned into RIMS as an attachment. Copies of any DOJ forms shall also be attached as scanned documents as needed. The hardcopy original 5150 form shall be left in the scanned documents box in the Watch Commander’s office.

I. Reports Received from Licensed Psychotherapist

1. Pursuant to W&I § 8105(c), a licensed psychotherapist shall immediately report to a local law enforcement agency the identity of any person who communicates a serious threat of physical violence against a reasonably identifiable victim or victims.

2. The psychotherapist and the local law enforcement agency should make reasonable attempts to notify the identifiable victim(s) of the threat. The contact and details shall be documented in a RIMS Miscellaneous Service Report (see Civil Code § 43.92).

3. The officer receiving the report shall fill out the Law Enforcement Report of Firearms Prohibition and mail it to DOJ as instructed on the form. A copy of the form shall be scanned and attached to the Davis PD RIMS report. DOJ will notify the person who made the threat that they are prohibited from possessing or having under their control a firearm for 6 months after the day the report is made to Davis PD. A violation of the firearm prohibition is a felony under W&I § 8100(b)(1).

4. The Investigations Sergeant should be notified of the report to determine whether firearms seizures may be necessary under W&I § 8102.
J. Training

This Department will endeavor to provide Peace Officer Standards and Training (POST)-approved advanced officer training on interaction with persons with mental disabilities, 5150 commitments and crisis intervention.

Darren Pytel
Police Chief

10/99
Rev. 7/00 (firearms provisions added)
2/01 (5150.05 information added)
6/03 (Sutter Davis will receive all 5150’s)
3/07 III, D updated for RIMS
06/08 restraints listed
12/08 section III, C, 2 added
03/09 clarification to III, B
04/10 officer considerations added
07/15 CIP added, criminal offense added, voluntary added, changes to officer considerations
04/17 Crisis Intervention added
11/17 CIP deleted
2/19 Crisis intervention renumbered to 3.05-AA)
12/19 additional guidance on probable cause

Reviewed 12/00, 1/03, 1/04, 11/11, 12/17, 5/19