



Roll Call Training Bulletin

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Sam Somers Jr., Chief of Police

Volume 43

February 17, 2016 *Firearms Confiscated Pursuant to 8102 W&I* *(5150 W&I Detentions for Mental Health Evaluation)*

The purpose of this training bulletin is to clarify the process and give guidance on what needs to be completed during 5150 W&I firearm confiscations.

ISSUE

When in the course of processing packets to seize firearms pursuant to 8102 W&I, many SPD officers are not aware of the roll the City Attorney's Office (CAO) plays in the process. Additionally, some officers have been advising 5150 W&I detainees and their families that the firearms taken at the scene during SPD responses are only being taken temporarily for safekeeping. Some officers are also not attaching the Property Receipt Form (SPD 779) or MH-302 (Application for 72 Hour Detention for Evaluation and Treatment Form) paperwork in a timely manner. Some officers have also been advising 5150 W&I detainees that their firearms WILL be returned to them. This is improper as the CAO has a duty to assess each case for possible permanent confiscation.

PROCESS FOR CONFISCATING WEAPONS

- When lawfully confiscating firearms (via consent, pursuant to a search warrant etc.) from the scene of a 5150 W&I mental health hold, a Property Receipt (SPD 779) for the firearm(s) taken shall be issued to the person detained for evaluation per statutory requirements as outlined in 8102(b)(1) W&I. The receipt must be issued to and signed by the person who possessed the firearm(s) at the time the weapon(s) is/are taken. If the subject is unwilling or unable to sign the SPD779 receipt, then place a comment in the owner's signature block of the form. If the subject is not the owner of the firearm and the owner is present, then the owner shall sign the SPD 779 receipt and be given their copy. A copy of the SPD 779 shall also be given to the person being detained for the 5150 W&I hold who possessed the weapon at the time of the detention. The Mental Health Form MH 302 (Application for 72 hour Detention for Evaluation and Treatment) must be completed and submitted by the reporting officer.
- You must describe the firearm and write the serial number and/or other identification about the firearm on the front of the SPD 779 (per 8102 W&I).
- The person detained must be notified of the procedure for the return, sale, transfer, or destruction of any firearm which has been confiscated. This information is found on the back page of the SPD Form 779 (Evidence & Property Booking Receipt and Notice of Rights) and satisfies the receipt and notification requirements described in 8102 W&I and pursuant to 33800 PC. The back of the SPD 779 form indicates where the firearm may be recovered, any applicable time limit for recovery, and the date after which the owner or possessor may recover the firearm pursuant to Chapter 2 (commencing with Section 33850 PC).
- Officers confiscating firearms from persons detained per 5150 W&I shall check the box at the bottom of the MH 302 form which indicates that law enforcement shall be notified when the person is released from treatment. The person to be notified is the Evidence and Property Section (EPS) Supervisor. Make sure the telephone number listed is filled in as the main EPS line 916-808-5237.



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- Weapons/Property seized pursuant to 8102 PC on a mental health hold must qualify for seizure. These weapons include:
 1. Deadly weapon (PC16590)
 2. Firearm (PC16520)**NOTE:** Ammunition, gun cases, holsters, etc., do not qualify under 8102 PC for seizure under this section.
- Once the Evidence and Property Section (EPS) receives the firearms, a case file is sent to the Sacramento City Attorney's Office for review. The assigned attorney will review the seizure to evaluate whether the City will seek to have the weapons destroyed pursuant to court order issued under 8102 W&I. In its review, the City Attorney's Office must make the determination of whether continued possession of the seized firearms by the subject is likely to result in harm to the subject or others.
- To assist the City Attorney with a successful petition to determine if return of the firearm(s) would likely result in harm to the subject or others, officers shall adequately document what transpired at the scene of the 5150 W&I detention to justify the confiscation of the firearm to include the manner of search which was used (e.g. consent, plain view, search warrant etc.), reason for confiscation, abnormal behavior observed, and any other relevant facts and observations. The facts surrounding the incident shall be complete and include thorough documentation to convince the Court the firearm should not be returned to the subject. Officers should not indicate to the 5150 W&I subject that any firearms taken will be returned but should merely describe the process whereby the firearm may be recovered per the instructions indicated on the SPD 779 form.
- After firearms are taken from an individual detained for 5150 W&I, EPS will work with the City Attorney's Office to petition the Court for a judicial determination regarding the confiscated firearms. In order for EPS to properly prepare a packet for the City Attorney's Office, a signed Firearms Property Receipt (SPD 779), the Mental Health evaluation form (MH 302), and adequate supporting information must be included in the reporting officer's written observations to support the confiscation of the firearm; without both the SPD 779 and MH302 forms properly filled out and signed, the petition cannot go forward. The City Attorney's Office will then have 30 days per 8102 W&I to file a petition to have the firearms permanently removed from the possession of the subject taken for the 5150 W&I hold. Without the necessary paperwork and officer's observations, the City Attorney's Office cannot successfully petition the Court for removal of any confiscated firearm(s) and the weapon(s) will have to be returned to the subject, **regardless** of their mental capacity to responsibly own the firearm(s).