



# El Segundo Police Department

## Training Section

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## TRAINING BULLETIN

November 1, 2017

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### Warrantless Searches for Firearms and W&I §5150 Subjects

Upon committing a person to a mental facility for a 72-hour evaluation pursuant to W&I §5150, and discovering that he or she owns or has possession of one or more firearms or other deadly weapons, the goal of law enforcement is to take those weapons from him or her so that upon release the patient will not have ready access to them.

Taking such weapons from 5150 patients is authorized under W&I §8102(a), which dictates that you “*shall*” (meaning it’s mandatory) confiscate all firearms and other deadly weapons owned or possessed by someone committed pursuant to W&I §5150 (or is a person as described in W&I §§ 8100 [*Patients Under Treatment for a Mental Disorder and Who May be Dangerous to Self or Others*] or 8103 [*Committed Mental Patients*]).

**However**, unless those weapons are taken pursuant to a free and voluntary consent (which some argue is difficult to get from someone with mental issues), or they are in plain sight, it has been held that to go looking for them is a “*search*” which under the Fourth Amendment, as a general rule, requires a search warrant. (See *People v. Sweig* (2008) 167 Cal.App.4<sup>th</sup> 1145; petition granted.)

The Legislature subsequently made it easy for you, authorizing such a search warrant under subdivision (a)(10) of P.C. 1542; “(w)hen the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in possession of, or in the custody or control of a person described in W&I § 8102(a),” which includes section

5150 patients. It is strongly suggested that you abide by this authority and get a warrant whether or not you also charge the person with a criminal offense.

Even if not criminally charged, using a search warrant negates any issue as to the lawfulness of such a search and/or seizure. And getting such a warrant is your best protection against any accusation that you acted unlawfully, and to help insure that all such weapons are located and safely secured.