

Hello Larry,

I would like to relate to you the general mechanism which under California's Welfare and Institutions code sections 5150 and 8102 lead to unwarranted gun confiscation.

Following I have attached a short general scenario (Keep and Bear Arms), the petition in the present case along with the related Points and Authorities and "evidence" as well as the psychiatric evaluation. Further I have provided copies of the relevant statutes.

The typical situation is where someone is accused of acting unstable or in a manner which might be deemed, by someone, as being a danger to himself or others. Under 5150, this is ground for taking the person into a 72 hour involuntary observation during which time a mental health professional observes and evaluates the person.

If the person is deemed to be a danger, then the 72 hour hold can be extended.

If the person is not so deemed, they are released.

The fine print of 5150 is included in my attachments.

Written by W. Michael Becker, Ph.D.  
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Once the 5150 has been effected, 8102 states that firearms in possession, etc. can be confiscated. This is typically done with the "permission" of anyone else who might give permission to the authorities to "take the weapons for safekeeping." This in itself is absurd. If the person who is a danger is removed under 5150, how can the presence of weapons be a danger?

Well, someone might posit, upon the return of the person, there would be a danger.

But, on the other hand, the 5150, if ended within the 72 hours, deems in itself, that the person is NOT a danger, so the return would not be a danger.

At the end of the first paragraph of 8100 it states that "A person is not subject to this subdivision [prohibition of possession etc. of firearms] once he or she is discharged from the facility."

This seems to contradict 8102.

If the provision is then terminated, on what ground do the authorities have for keeping the firearms and requiring a hearing for the return of firearms for a person who has been evaluated and released?

This is a fool's logic, but one which is stripping people of their property outside of the authority of law.

It might be argued, that because there is the option of a hearing, the law provides a reasoned avenue for that person to regain possession. Why is it fair for a person who has had property seized outside of the authority of law to have to come to a hearing to argue for the return of his property?

But there is a problem with the hearing itself. In order for the seized weapons to be returned, it is not the government which must show that the person is a danger to himself or others, but rather the judge (yes, only a judge, no jury) must be convinced by a preponderance of the evidence that the person will NOT be a danger to himself or others.

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What has happened to the “presumed” innocent (or in this case competent) until proven otherwise?

In this situation, the judge must be convinced, not of incompetence (the argument of the prosecution), but rather of competence, the argument the person must make.

This is a dire reversal of our typical Constitutional rights.

But, there is yet another twist.

This is NOT a trial, and perhaps not even a superior court proceeding, but might be deemed, instead, an administrative hearing.

Superior court proceedings are governed by the Constitution and accompanying rights; the right to confront our accusers, included.

On the other hand, typical protective procedures mandated under the Constitution are NOT required in administrative hearings.

For example, the judge is free to consider written statements from witnesses not present for cross-examination.

So, if the underlying 5150 and the subsequent confiscation is based upon questionable out of court statements, the accused can be denied the chance to test the veracity of the statements in court.

This is a serious problem when something as important as Constitutionally protected property and Second Amendment rights are being denied.

Further, the standards of 5150 are ambiguous at best. What does it mean to be a danger to himself or others? There is no behavioral standard stated in the code for this assessment.

A lot of what we do on a daily basis, whereas considered safe by us, might be deemed a danger to ourselves or others.

Does this warrant being interred for involuntary observation and perhaps losing Second

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Amendment Rights?

For instance, some people drive while tired.

This might be a danger to others.

Doing this on a regular basis might be seen by some as being indicative of an ongoing mental problem, maybe even to the point of a 5150.

What about smoking?

What about crossing the street without looking both ways?

If these are seen as being a danger to oneself or to others, poorly written 5150 can provide authority for 72 evaluation and perhaps institutionalization.

Because 8102 DOES NOT require a firearms related 5150 to take effect, a 5150 for any purpose can lead to firearms confiscation.

So, it is possible, that any “dangerous” behavior might lead to firearm confiscation.

The present use of

W&I 8102 coupled with 5150 is indeed insidious.

Clearly this cannot be the overt intent of the legislature.

It is not unreasonable that people who have been duly adjudicated in Constitutionally protected superior court proceedings as being a danger to themselves or others to be limited in their access to lethal force. On the other hand, the misuse of 5150 coupled with 8102 enables law enforcement to seize property and the courts to deny Second Amendment rights based upon the mere unfounded transient accusation of any danger whatsoever, regardless as to how remote from the possession of firearms.

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Are we devolving to a position where the mere desire to own firearms will be deemed as evidence of being a danger, and therefore firearms being prohibited from anyone who wants them?

The NRA's current position on the pending bill would, it appears, provide for all courts and law enforcement across the country, the tools which are now so readily abused by those institutions in California.

How great is the siren song of safety. Who was it that said that those who are willing to trade freedom for security are worthy of neither?

I hope this material is informative

Please let me know the next step. Let's try to effect some good.

Regards,

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