



**Guidance for Detaining Persons by 5150 Application in Non-LPS Designated Facility**

**Assembly Bill (AB) 2275 is effective January 1, 2023**, pursuant to Welfare and Institution Code (WIC) §5256(b), requiring a **certification review hearing (CRH)**, also known as a probable cause hearing, **to be held whenever a person is detained by WIC §5150 application for more than 72 hours at any facility**, and the person has not been certified for intensive treatment pursuant to WIC §5250. **All Non-LPS-designated facilities [e.g., emergency departments (ED), crisis stabilization units (CSUs)] are required to:**

- Comply with amended law [WIC §§5150, 5151, 5256, 5275, 5350, 5354, 5585.20];
- Notify San Bernardino County Office of Patients’ Rights immediately if the person being detained in any facility is not released within 72-hours of involuntary detention;
- Adhere to involuntary detention period beginning at the time the person is first detained by WIC §5150 application; and
- Ensure a CRH is conducted within 7 days of initial WIC §5150 application and in accordance with San Bernardino County procedures.

**Note:** The person being detained pursuant to WIC §5150 has the right to request a formal court hearing by *writ of habeas corpus* if not released after the 72-hour hold, if they or someone acting on their behalf has made a request for release to any member of the treatment staff of the facility (WIC §5275).

**If the person agrees to remain at the facility on a voluntary basis, a CRH is not required.**

- The facility must demonstrate the person is voluntary (e.g., voluntary agreement for treatment form signed by the patient).
- The facility must provide verification of the person’s voluntary status upon request.

**If the facility does not release the person at the end of the initial 72 hours from initial WIC §5150 application, and the facility continues to detain the person due to symptoms related to Danger to Others, Danger to Self, and/or Gravely Disabled, as a result of a mental disorder, the information below applies:**

**As soon as the 72-hour detention period ends, the facility must:**

- Contact/notify San Bernardino County Office of Patients’ Rights at **1-800-440-2391**
- Email or fax a copy of original WIC §5150 application form to the Office of Patients’ Rights, *and* name of facility and address, and facility representative contact information:

[DBHPatientRightsOffi@dbh.sbcounty.gov](mailto:DBHPatientRightsOffi@dbh.sbcounty.gov) or FAX: 909-421-9258

**A CRH must be scheduled within 7 days from the date of initial 5150 Application:**

- San Bernardino County Patients’ Rights Advocate will inform facility representative of the time/date of the CRH, which will be scheduled within 7-days of the initial detention.
- A designated representative from your facility must be prepared to present evidence at the hearing.
- A Patients’ Rights Advocate will contact the person being detained to prepare them for the CRH and assist the person as appropriate (i.e., apprise them of their rights under law, provide education and advocacy, etc.).

**If the person requests a formal court hearing by writ of habeas corpus (past the 72 hours), the following applies:**

- Efforts shall be made to facilitate this request by any and all parties responsible for this process.
- CRH may be forfeited by the person upon making writ of habeas corpus request.
- California Superior Court – San Bernardino County, Mental Health Counselors Office will provide further guidance on scheduling this hearing.



## AB 2275: Certification Review Hearing at a Non-Designated Facility

### Preparing for the Certification Review Hearing

- San Bernardino **County Patients' Rights Advocate** will schedule the **certification review hearing (CRH) within the 7-days of initial WIC §5150 application** and inform **facility representative** of the scheduled date and time.
- The purpose of the CRH is to determine if probable cause exists to detain a person as a danger to self (DTS), danger to other (DTO), and/or gravely disabled (GD) due to a mental health disorder or chronic alcoholism.
- CRH is an informal hearing usually lasting no more than 15-minutes.
- **Facility representative, Patients' Rights Advocate, the hearing officer, the person being detained,** and any witnesses will participate in the CRH.
- CRH shall be conducted in an impartial/informal manner to encourage free and open discussion.
- All evidence relevant to establishing that the person is/is not DTS, DTO, or GD, shall be admitted at the hearing and considered by the **hearing officer**.
- **Facility representative** will present evidence in support of continued detention.
- **Patients' Rights Advocate** will present the expressed wishes of the person being detained.
- Certification review **hearing officer** will decide if probable cause exists or not at the conclusion of the CRH.

### Rights of the Person Certified (Person being Detained)

1. Assistance by an attorney or advocate.
2. To present evidence on his/her own behalf.
3. To question persons presenting evidence in support of the certification decision.
4. To make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the decision to continue detention.
5. The **hearing officer** shall be informed of that fact and of the probable effects of medication received within 24 hours (or longer period when designated by the hearing officer prior to the CRH).

**Note:** The facility shall notify the patients' family members, or designated person, of the time and place of the CRH. **The patient shall be advised of their right to not have this information provided to anyone.**

### Location of the Certification Review Hearing

The location of the **CRH** shall be compatible with, and least disruptive of, the treatment being provided to the person being detained. Arrangements must be made to ensure a safe, quiet, and protective environment for the person being detained to allow for the patient to fully participate while maintaining their right to privacy and confidentiality.

### Facility Representative

The **facility representative** is designated by the director or professional person in charge of the facility and shall be present at the CRH. Commonly selected facility representatives include a registered nurse, psychiatrist, social worker, or psychologist. The function of the facility representative is to present evidence in support of continued detention and answer related questions.

### Information to Present at the Certification Review Hearing

- The basis for detention and current symptoms indicating the need for continuing involuntary detention.
- Information of recent or past psychiatric hospitalizations, if known.
- Recent clinical assessment and behavioral observations.
- Documented efforts made to facilitate transfer of the detained person to a County Designated LPS Facility.
- Less restrictive discharge plan(s) considered, and why voluntary services are not appropriate.
- Collateral contacts made and/or attempted.

**DISCLAIMER:** *The information on these pages is provided for general informational purposes only and may not reflect the current law in your jurisdiction. No information contained on this page should be construed as legal advice from Patient Advocacy or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter.*

## AB 2275: Process Flowchart for Non-Designated Facilities

### Key Words and Abbreviations:

**CRH** = Certification Review Hearing

**HO** = Hearing Officer

**FR** = Facility Representative

**OPR** = County Office of Patients' Rights

**Writ** = Judicial Review by writ of habeas corpus

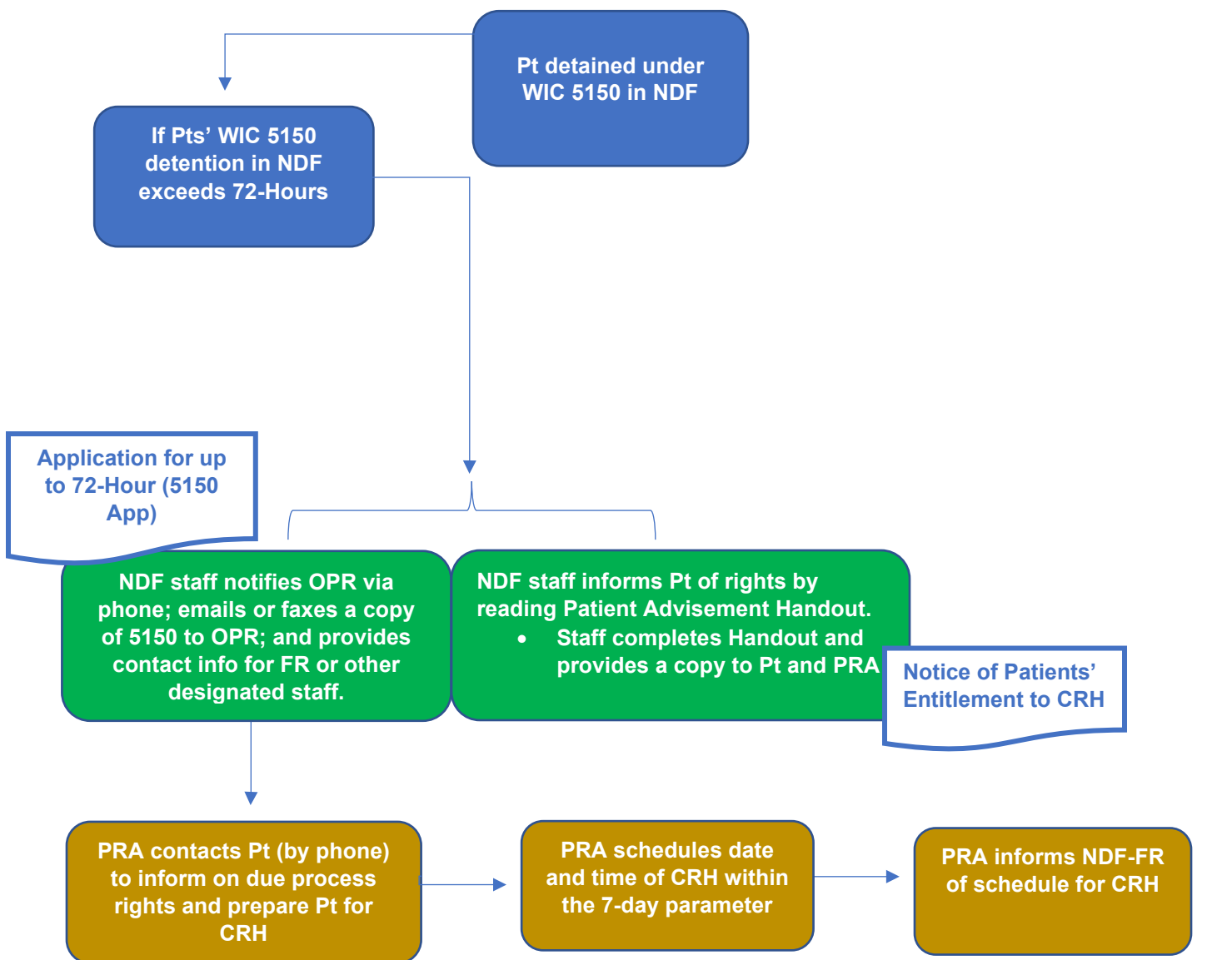
**HO** = Hearing Officer

**DF** = County LPS Designated Facility

**PRA** = County Patients' Rights Advocate

**Pt** = Patient

**MHCO** = Mental Health Counselor Office



## Certification Review Hearing via Conference Call: Flowchart

