

California Court Of Appeal Reaffirms Local Authority To Confiscate And Destroy Firearms Seized From Mentally Impaired Persons

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ATTORNEYS

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Law enforcement efforts to confiscate weapons from individuals detained for psychiatric evaluation under Welfare & Institutions Code Section 8102 do not violate the Second Amendment, a California Court of Appeal has ruled. The court upheld the San Diego Police Department's confiscation and proposed destruction of guns seized from an elderly woman who had made a suicide threat and was detained for evaluation.

In *City of San Diego v. Boggess*, the Court considered a Second Amendment challenge to Welfare and Institutions Code Section 8102, which authorizes seizure and forfeiture of weapons belonging to persons involuntarily detained for psychiatric evaluation. The case arose when San Diego police officers responded to a report of a suicide threat by a 72-year old woman who told a family member that she wanted to "get it over with" and wanted to shoot herself with a gun but was just missing the bullets. The officers transported the woman to the county mental health facility for evaluation and impounded three handguns that were in her closet. The physician diagnosed her with depressive disorder and opined that her potential for harm "could be high" due to her lack of an adequate support system, multiple stresses, and access to lethal weapons. San Diego then filed a petition under Section 8102 for retention and destruction of the impounded handguns.

The Court ruled that there was sufficient evidence to support a finding that return of the firearms would endanger the woman or others. Additionally, the Court rejected an argument that Section 8102 violates the Second Amendment right to bear arms. On this point, the Court emphasized that the Second Amendment does not invalidate laws designed to keep firearms out of the hands of a dangerous person.

This case is confirmation for law enforcement officers that, even after recent U.S. Supreme Court decisions broadly interpreting the Second Amendment, it is still possible under state law to retain and destroy firearms confiscated from mentally impaired individuals.

For advice regarding confiscation and destruction of firearms confiscated under Section 8102, please contact D. Craig Fox at dcfox@rwglaw.com.