

Hearing Required Before Return of Confiscated Weapons

10.04.2021

A law enforcement agency seeking to retain confiscated weapons may obtain a pre-return evidentiary hearing even if the owner is not ultimately admitted for a mental health evaluation.

Richards, Watson & Gershon achieved this important ruling for law enforcement in a published decision of the Court of Appeal last Friday. In ***Folsom Police Department v. M.C.***, police officers confiscated 26 firearms - as required by state law - from a man who had been detained and apprehended for examination of his mental condition after he threatened to harm himself. After assessment by a doctor, the man was released instead of being admitted into the hospital for evaluation. The Folsom Police Department filed a petition in the trial court, seeking a ruling that the return of the weapons to the man would endanger him and others.

The trial court refused to provide Folsom with an evidentiary hearing on the ground that law enforcement may not seek to retain confiscated weapons unless a person has been involuntarily admitted into the hospital for a mental health evaluation under California law. On appeal, the Court of Appeal in Sacramento disagreed with a prior decision of the Court of Appeal in San Diego, and held that law enforcement is entitled to an evidentiary hearing on the return of firearms when the owner has been detained and apprehended; admission to a facility for evaluation is not necessary.

For further information and consultation, please contact **Jennifer Petrusis, Kyle Brochard, Gaby Lion, David Lim**, or any member of **RWG's Police Practices Group**.

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OF RELATED INTEREST

Police Practices (Litigation)