No. C091173

IN THE CALIFORNIA COURT OF APPEAL
FOR THE THIRD APPELLATE DISTRICT

FOLSOM POLICE DEPARTMENT AND CITY OF FOLSOM,
Plaintiffs-Appellants

v.

MARK COLEMAN,
Defendant-Appellee.

Appeal from the Superior Court of the State of California, County of Sacramento
Hon. Stephen Acquisto
Case No. 34-2019-20000415

AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PLAINTIFFS-APPELLANTS FOLSOM POLICE DEPARTMENT AND CITY OF FOLSOM

NORA FRIMANN, City Attorney (93249)
MATTHEW PRITCHARD, Senior Deputy City Attorney (284118)
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Telephone Number: (408) 535-1900
Facsimile Number: (408) 998-3131
E-Mail Address: cao.main@sanjoseca.gov

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT CITY OF FOLSOM

Pursuant to California Rule of Court 8.200, the League of California Cities (League) respectfully requests leave to file this amicus curiae brief in support of Appellant City of Folsom and its police department ("City").

The League is an association of 476 California cities with a common goal of promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance.

In this amicus briefing, the League outlines the statutory structure governing the forfeiture of weapons in conjunction with mental-health detentions, and it explains how the trial court's order misapplied these statutes. The League further elaborates how the trial court's order harms the state's interests in keeping weapons out of the hands of mentally disturbed persons, as well as detainees' liberty interest in full adjudication before any weapons prohibition is entered against them. The League requests on behalf of all member cities that this Court vacate the trial court's order.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Introduction

Section 5150 of the Welfare and Institutions Code[1] authorizes police officers to detain a person for a mental-health evaluation when they have probable cause to think the person may be dangerous. Sometimes, officers will take custody of guns or other deadly weapons in conjunction with such a detention. This case is about what happens with those weapons afterward. Specifically, it is about two separate and distinct methods California law provides for the forfeiture of weapons seized during a mental-health detention.

One method, prescribed by Section 8103(f), applies when the person detained under § 5150 is involuntarily admitted to a mental-health treatment facility. In that situation, § 8103(f) causes a five-year prohibition on weapon possession and an automatic basis for forfeiture of any weapons seized in conjunction with the detention. In other words, if the person detained under § 5150 is involuntarily admitted to a hospital, the law enforcement agency does not have to prove anything else to effect forfeiture. The forfeiture is established conclusively by virtue of the involuntary hospital admission.

The second method, under Section 8102(h), applies in the situation presented here: a § 5150 detention that does not result in a person's involuntary hospital admission. In that circumstance, there is no automatic weapon ban. Rather, the police agency that detained the person must actively petition for forfeiture and then prove at a hearing that return of the weapons would pose a danger to the detained person or others. Unlike under § 8103(f), the law enforcement agency may retain custody of the

[1] All remaining in-text statutory citations refer to sections of the Welfare and Institutions Code unless otherwise specified.

weapons under § 8102(h) only if the trial court makes this specific danger finding and orders forfeiture on that basis.

The trial court below misapplied these statutes. It ruled that it lacked the power to order forfeiture of Respondent Mark Coleman's weapons under § 8102(h) because Coleman had not been involuntarily admitted for mental health treatment following his § 5150 detention. But involuntary admission is not necessary for judicial forfeiture under § 8102(h). Indeed, that is the whole point of § 8102(h): to provide a mechanism for forfeiture in the absence of the automatic five-year ban that involuntary hospital admission triggers under the separate provisions of § 8103(f).

No one disputes that police officers properly detained Coleman for a mental-health evaluation under § 5150 following his suicide threat. The plain language of § 8102 therefore authorized the City of Folsom to petition for forfeiture of Coleman's weapons as a result of that detention, and the trial court was obliged to make a finding on whether return of the weapons would be dangerous. In failing to do so, the trial court erred.

Section 8102(h) is an important star in the constellation of regulations governing gun possession by the mentally ill. The mechanism for judicial forfeiture it creates augments companion provisions relating to administrative weapons forfeiture in a variety of mental-health contexts. The trial court's order here nullified § 8102(h), effecting what is in essence the judicial repeal of that important statute. Because this is inimical to both separation of powers and the legitimate public-safety interests § 8102 secures, the League requests that the Court vacate the trial court's order and hold, in a published opinion to provide guidance for trial courts throughout the state, that judicial forfeiture of weapons under § 8102(h) does not require involuntary hospital admission.

Relevant Background

I. Coleman is detained for a mental health evaluation

In July 2019, City of Folsom police officers detained Respondent Mark Coleman for a mental health evaluation. (JA 120–21.) Just before the detention, Coleman had told personnel at a psychiatric facility that he was going to "shoot [him]self in the head." (JA 52.) Coleman's suicide threat followed another concerning episode a month earlier when his wife called the police to report that he was acting so aggressively toward her that she felt compelled to drive to a police station out of fear for her safety. (JA 53–54.)

Police officers located Coleman in his car shortly after his suicide threat. (JA 33.) When the officers approached him, they discovered he had a loaded gun in his waistband. (JA 53.) The officers determined based on Coleman's recent history of disturbing mental health episodes that he was a danger to himself or others. (JA 54.) They accordingly detained him under California Welfare and Institutions Code Section 5150 and transported him to Mercy Hospital of Folsom for evaluation. (JA 54–55.) As mandated by California Welfare and Institutions Code Section 8102(a), the officers took custody of Coleman's gun, as well as twenty-five other guns he possessed or owned, in conjunction with his § 5150 detention. (JA 52, 55, 58–59.)

At Mercy Hospital, two doctors assessed Coleman's mental condition to determine whether it was necessary to take the further step of involuntarily admitting him for mental-health treatment. (JA 95, 99–103.) The doctors determined that involuntary admission was not necessary, in part because they were aware that police officers had confiscated all of Coleman's weapons. (JA 103.) Coleman was consequently released. (*Id.*)

II. The superior court denies Folsom's request for weapons forfeiture

The City of Folsom petitioned the superior court for forfeiture of Coleman's twenty-six weapons under § 8102(h). (JA 12.) The City argued that return of the weapons to Coleman would pose a danger to Coleman and others. (*Id.*) The City submitted evidence in support of its petition. (JA 37.) Coleman contested forfeiture and requested a hearing. (JA 27.)

The superior court denied the City's petition. (JA 125.) In so doing, the court did not make a determination on whether return of Coleman's weapons would pose a danger to him or others. The court concluded that it "lack[ed] the authority" to make that finding "because Coleman was not placed on a 5150 hold." (*Id.*) The court accordingly ordered return of Coleman's weapons. (*Id.*)

Argument

The superior court erred in declining to consider the City's § 8102 petition, and the reasoning underlying the court's order fundamentally misconstrued California's mental-health forfeiture statutes. The League joins the City of Folsom in requesting that this Court vacate the superior court's decision.

I. The superior court improperly declined to consider whether return of Coleman's firearms would pose a danger as required by § 8102(h)

A. Judicial forfeiture under § 8102(h) is distinct from administrative forfeiture under § 8103(f) and does not require involuntary hospital admission

Welfare and Institutions Code Section 5150 permits police officers to detain a person for a mental-health evaluation when they have probable cause to believe that the person is a danger to himself or others. (Cal. Welf. & Inst. Code § 5150(a) (2019).) A detention under § 5150 does not cause a

person to be admitted to the hospital for treatment. The statute simply authorizes police officers to take custody of the person, after which the person must be evaluated by a mental-health professional to determine whether involuntary hospital admission is necessary. (*See id.*; Cal. Welf. & Inst. Code § 5151 (2013).) This detention to facilitate a mental-health assessment is often referred to as a "5150 hold." (*See*, *e.g.*, *In re Conservatorship of M.B.* (2018) 27 Cal.App.5th 98, 101 [noting that a detention for mental-health evaluation "is often referred to as a '5150 hold'"]; *Jacobs v. Grossmont Hospital* (2003) 108 Cal.App.4th 69, 73 [referring to the mental-health detention as a "Section 5150 hold"].)

When a person detained under § 5150 has deadly weapons in his possession or control, a separate provision of the Welfare and Institutions Code—Section 8102—comes into play. "Section 8102 authorizes the seizure and possible forfeiture of weapons belonging to persons detained for examination under section 5150 because of their mental condition." (*City of San Diego v. Boggess* (2013) 216 Cal.App.4th 1494, 1500; Cal. Welf. & Inst. Code § 8102(a) (2013) ["Whenever a person[] who has been detained or apprehended for examination of his or her mental condition . . . is found to own, have in his or her possession or under his or her control, any . . . deadly weapon," the weapon "shall be confiscated . . . ."].) Forfeiture in this context means that the seizing law enforcement agency has authority to destroy the confiscated weapons after first giving the previous owner an opportunity to arrange for their transfer and sale to a third party. (*See* Cal Welf. & Inst. Code § 8102(h).) The statute recognizes two methods under which this weapons forfeiture may take place.

One, which may be denoted "administrative forfeiture," applies to "a person described in Section 8100 or 8103." (*See id.* at § 8102(a).) A "person described in Section 8100 or 8103" is a person who has been found to suffer from serious mental health issues in other specified contexts. As

relevant here, § 8103(f) applies to "A person who has been (A) taken into custody as provided in Section § 5150 . . . (B) assessed within the meaning of Section 5151, and (C) admitted to a [mental-health] facility within the meaning of Sections 5151 and 5152." (Cal. Welf. & Inst. Code § 8103(f) (2019).)[2] If a person meets all three of those criteria—that is, the person has been "taken into custody" under § 5150, "assessed" by a mental-health professional, and then "admitted to" a treatment facility—§ 8103(f) categorically prohibits the person from owning or possessing firearms for five years. *Id.* Thus, the grounds for forfeiture of weapons confiscated from such a person during his mental health episode are established automatically. (*See id.*; Cal. Welf. & Inst. Code § 8102(a).)

The second forfeiture method, which exists pursuant to § 8102(h) and may be denoted "judicial forfeiture," applies to a "person[] who has been detained or apprehended for examination of his or her mental condition"—i.e., detained under § 5150—but not admitted to a treatment facility. (Cal. Welf. & Inst. Code § 8102(a).) Unlike with administrative forfeiture under § 8103(f), there is no automatic basis for forfeiture under § 8102(h). Rather, a law enforcement agency seeking judicial forfeiture under § 8102(h) must initiate the process by affirmatively petitioning the court for a forfeiture order. (*See id.* at § 8102(c) & (d).) And the court may only order forfeiture if the petitioning agency proves "that the return of the [seized] firearm [to the person from whom the firearm was seized] would likely endanger the person or others." (*Id.* at § 8102(c) & (h); *Boggess*, *supra*, 216 Cal.App.4th at 1500 ["Section 8102 [] places the onus upon law

[2] All citations to Section 8103(f) refer to the version of the statute in effect at the time officers seized Coleman's weapon and sought forfeiture. The Legislature has since altered the statute's language slightly, but the changes are not substantive and would not affect any analysis here.

enforcement to initiate the forfeiture proceeding, and to bear the burden of proof on the issue of danger . . . ."].)

As the foregoing makes clear, the two forfeiture methods of California law are distinct. Section 8102 sets the stage at the outset by defining two classes of people subject to forfeiture: "[A] person who has been detained or apprehended for examination of his or her mental condition *or* . . . a person described in Section 8100 or 8103." (Cal. Welf. & Inst. Code § 8102(a) [emphasis added].) One of these classes—specifically, those "described in Section . . . 8103"—consists of people who have been detained under § 5150 *and* "admitted to a designated [treatment] facility." (*See id.*; *id.* at § 8103(f).) The other consists of people who have merely "been detained or apprehended" under § 5150. (*See id.* at § 8102(a); *id.* at § 8102(c) [requiring a forfeiture petition within 30 days "[u]pon release of a person as described in subdivision (b)"]; *id.* at § 8102(b) [describing "a person who has been detained or apprehended for examination of his or her mental condition"].)

By its plain terms, § 8102 authorizes forfeiture as to both classes of people: one via § 8103(f), which requires involuntary hospital admission; the other under § 8102(h), which does not require involuntary hospital admission but is available only upon a judicial finding of dangerousness. (*Id.* at § 8102(a)–(h).) Whereas forfeiture under § 8103(f) is established automatically, subsections (b) through (h) of § 8102 make clear that a law enforcement agency seeking forfeiture as to a person who has been detained without hospital admission must affirmatively petition and prove danger for such forfeiture. (*See id.*)

B. The superior court erroneously conflated the forfeiture methods of § 8102(h) and § 8103(f) in concluding that it could not consider whether return of weapons to Coleman would create a danger

As the superior court recognized, City of Folsom police officers detained Respondent Coleman under § 5150 for the purpose of facilitating a mental-health evaluation. (JA 120–21.) Coleman was thus "detained or apprehended for examination of his . . . mental condition" within the meaning of § 8102(a). As a result, § 8102(a) required the officers to seize the weapons in Coleman's custody and control, and the City of Folsom was permitted to petition for judicial forfeiture under § 8102(h). (*See* Cal. Welf. & Inst. Code § 8102(c) & (h).) The superior court was then required to make a finding as to whether return of Coleman's weapons would be dangerous, and to grant the City's forfeiture petition if it answered that question in the affirmative. (*Id.* at § 8102(h).)

The superior court, however, disclaimed the authority to consider forfeiture at all. Relying on *City of San Diego v. Kevin B.* (2004) 118 Cal.App.4th 933, the court concluded that "under section 8102, the authority to confiscate and destroy a person's firearms is tied to the process for that person being involuntarily held in a mental health facility." (JA 122.) Because Coleman "did not meet the criteria for involuntary admission" to a treatment facility, the court reasoned, he "was not placed on a 5150 hold or evaluated," and the "forfeiture provisions of section 8102" were never "triggered." (JA 124.) The court ruled that in the absence of an "involuntary admission" to the hospital and attendant five-year ban on Coleman's ability to possess weapons, the City had "no authority under section 8102 to petition" for forfeiture, and the court had no "authority to consider any evidence" the City would have presented in support. (JA 124–25.) The court accordingly denied the petition. (*Id.*)

The superior court erred. Forfeiture under § 8102(h), which is what the City sought, does not require that the respondent have been involuntarily admitted to the hospital. To trigger a danger hearing, the statute requires only that the respondent have been "*detained or apprehended* for examination." (Cal. Welf. & Inst. Code § 8102(a) [emphasis added]; *see also Boggess*, *supra*, 216 Cal.App.4th at 1505 ["Section 8102 . . . prohibits a person *detained* under section 5150 from recovering their seized firearms upon proof" of danger following a hearing] [emphasis added].) That is the entire reason why § 8102 requires additional procedures and an explicit judicial finding of danger before allowing forfeiture under subsection (h)—because there has not been a hospital admission to trigger the automatic danger determination and attendant five-year firearm ban under the separate provision of § 8103(f).

In concluding otherwise, the superior court conflated the judicial forfeiture of § 8102(h) with the distinct administrative forfeiture mechanism of § 8103(f). In essence, the court mistakenly read § 8102(a) to allow weapons forfeiture only when a person is *both* "detained" for mental-health examination *and* is "described in . . . Section 8103." But that is not what the statute says. On the contrary, it authorizes forfeiture when a person is *either* "detained or apprehended for examination of [his] mental health condition *or* [is] a person described in Section [] 8103." (Cal. Welf. & Inst. Code § 8102(a) [emphasis added].)

Were the superior court correct—that is, if it were accurate that involuntary hospital admission is a prerequisite to any mental-health weapon forfeiture—then the entirety of § 8102(b)–(h) would be superfluous and nonsensical. Section 8103(f) already prohibits those admitted for mental health treatment from owning or possessing weapons on account of the danger it would pose. If § 8102 allowed forfeiture only as to those people already found dangerous and banned from having guns under

§ 8103(f), there would be no point to the hearing and judicial danger requirements prescribed in § 8102(c) and (h). And there would be no point to the statute's explicit reference to persons "detained or apprehended" under § 5150 as a class of people to whom forfeiture applies *in addition to* the class of people "described in Section [] 8103." (*Id.*)

Indeed, even § 8102's mandate that officers seize weapons from a person "detained or apprehended for examination of his or her mental condition" would be largely meaningless under the superior court's reading. (*See id.*) If "detained or apprehended for examination" meant the same thing under § 8102 as "involuntarily admitted to the hospital," police officers would never be empowered to confiscate weapons in the person's custody and control at the time of a § 5150 detention, because they could never know at the time they seize and submit the person for mental evaluation whether the hospital will ultimately admit him within the 72-hours period § 5150 prescribes.

The provisions of § 8103(f) likewise would not make sense if § 8102 permitted forfeiture only after involuntary hospital admission. Recall that there are three requirements for forfeiture under § 8103(f): a § 5150 detention, assessment by a mental health professional, and admission to a treatment facility. (Cal. Welf. & Inst. Code § 8103(f)(1)(A)–(C).) In addition, § 8103 prescribes its own set of procedures that a person who has been involuntarily admitted for mental health treatment must follow if she wishes to challenge the statute's five-year ban. (*Id.* at § 8103(f)(5).) The statute places the burden on the banned individual to contest the prohibition, and it sets forth the rules for the hearing that must take place in the event of such a challenge. (*Id.*)

Yet if, as the superior court ruled, a detention under § 5150 occurs only when a person has been admitted to a treatment facility, the first two of § 8103(f)'s prerequisites (detention and assessment) would be subsumed

in the third (admission). (*See* JA 122–24 [concluding that there was no § 5150 detention to "trigger[]" the provisions of § 8102].) They would have no effect or meaning, because detention and assessment under § 5150 would be one and the same with "admi[ssion] to a designated facility." (Cal. Welf. & Inst. Code § 8103(f)(1)(A) & (C).) Similarly, the provisions of § 8103 placing the burden on an involuntarily admitted person to challenge the five-year weapon ban would be null, as § 8102(h) would require an entirely new hearing (with different burdens and procedures) before forfeiture.

The superior court's order would, in short, read whole swaths of the respective statutes out of the Welfare and Institutions Code. Such a construction violates both common sense and basic principles of statutory interpretation, under which "all parts of a statute should be read together and construed in a manner that gives effect to each." (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462, 468.; *Williams v. Superior Court* (1993) 5 Cal.4th 337, 357 ["An interpretation that renders statutory language a nullity is obviously to be avoided."].)

The superior court's interpretation of § 8102 also runs headlong into the court of appeal's decision in *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 424, which considered a constitutional challenge to § 8102. Critically, the respondent in *Rupf* (like Respondent here) was *not* involuntarily admitted to the hospital under § 8103(f). (*See id.* at 418 [observing that the respondent was detained for 36 of the 72 hours § 5150 permits "without judicial commitment"].) The respondent was therefore subject to weapons forfeiture only under § 8102(h) and challenged that statute as constitutionally infirm. (*See id.*) The respondent argued that § 8102 was impermissibly vague because it differed in fundamental respects from § 8103. One such difference was that under § 8102, "a judge, rather than a medical professional[,] makes the ultimate assessment of danger." (*Id.* at 424.) The

respondent further noted that § 8103 prescribes "more rigorous" procedural standards than does § 8102. (*Id.* at 424–25.)

The *Rupf* court rejected the respondent's challenge. The court held that § 8102 and § 8103 were indeed fundamentally different, but it concluded that those differences followed naturally from the fact that § 8103 "effects a more lengthy and severe deprivation" of liberty interests than § 8102. (*Id.*) There was thus nothing constitutionally infirm, the court held, about § 8102's reliance on judicial findings regarding danger and less formal procedures. (*See id.*)

The superior court's ruling here cannot be reconciled with *Rupf*. If the superior court were correct that § 8102(h) required hospital admission to trigger forfeiture proceedings in the same way as § 8103(f), the *Rupf* court's contrasting of the two statutes—and its explicit recognition of their different procedures and effects—would have made no sense. Indeed, if § 8102(h) forfeiture required the same involuntary hospital admission as § 8103(f), the entirety of the *Rupf* court's analysis of the differences between the two statutes would have been superfluous. The court would have simply held that the respondent's weapons were not subject to forfeiture under § 8102 given that he was not forcibly admitted for treatment. (*See id.* at 418.) The court did not so hold because that is not what § 8102 says. Neither the superior court nor Respondent in his briefing here addresses *Rupf*'s analysis or attempts to explain how the *Rupf* court's explicit recognition of the differences between § 8102 and § 8103 does not foreclose their proffered interpretation here.

The superior court's reliance on another decision, *Kevin B*, was misplaced. The court in *Kevin B.* held that § 8102(a) did not authorize police officers to seize or seek forfeiture of weapons as to a person the officers *never detained* under § 5150. (*Kevin B.*, *supra*, 118 Cal.App.4th at 939–41 [holding that a person has not been "detained under section 5150"

if law enforcement never takes him into custody for a mental-health assessment, evaluation, and possible admission].) The court observed: "By its terms[,] section 8102[a] permits confiscation of weapons only of persons who have been apprehended or detained under section 5150 *or* who have been evaluated . . . by a mental health professional." (*Id.* at 941 [emphasis added].) Because the respondent before it had been neither "detained under section 5150" nor "evaluated" by a mental health professional, § 8102(a) did not authorize forfeiture proceedings. (*Id.*)

Contrary to the superior court's (and Respondent's) reading of the case, *Kevin B.* did not hold that involuntary hospital admission was a necessary predicate to forfeiture under § 8102, or that a person who has not been admitted for mental-health treatment has "not been placed on a 5150 hold." (*Cf.* JA 125 [reading *Kevin B.* as support for the notion that "Coleman was not placed on a 5150 hold" and therefore could not be subject to forfeiture under § 8102].) The *Kevin B.* court had no occasion to consider that anomalous proposition because the respondent in the case had never been taken into custody in the first place. (*See id.* at 936–42 [emphasizing repeatedly that a person must be "taken into custody" for § 8102 to apply].)

Rather, the *Kevin B.* court's holding followed necessarily from a straightforward reading of § 8102(a), which allows weapon seizure and forfeiture only where a person has been "detained or apprehended for [mental-health] examination" or is "described in section 8100 or 8103." (Cal. Welf. & Inst. Code § 8102(a).) A person whom police officers never detained under § 5150 fits into neither of those categories, so the court correctly concluded that § 8102(a) could not authorize forfeiture of such a person's weapons. (*Kevin B.*, *supra*, 118 Cal.App.4th at 941 ["[O]nly those who are justifiably *apprehended or detained* to have their mental condition evaluated are subject to [§ 8102's] reach."] [emphasis partially removed].)

Kevin B.'s holding is irrelevant here because unlike the respondent in that case, Coleman *was* detained under § 5150 and assessed for possible involuntary admission. Coleman was thus subject to forfeiture under the plain language of § 8102(h). The superior court misread *Kevin B.* in concluding that something beyond a § 5150 detention is necessary to authorize judicial forfeiture proceedings.

Relatedly, Coleman's theory that "assessment" and "evaluation" mean different things (see Respondent's Brief pp. 7–12) is beside the point. Whatever the semantic significance of those words in other contexts, Section 8102 does not refer to, and is not predicated on, "assessment" or "evaluation." Rather, it authorizes forfeiture as to any person "who has been detained or apprehended for examination of his" mental condition upon the proper showing of danger. (*See* Cal. Welf. & Inst. Code. § 8102(a)–(c), (h).)

The *Kevin B.* court's reference to "assessment and evaluation" did not purport to impose additional requirements for forfeiture as to a person who has been detained under § 5150. It was simply shorthand to describe the basic proposition that a person who has never been detained and submitted for a mental health examination under § 5150 has necessarily not been "apprehended" nor "released" following such a detention and thus cannot be subject to § 8102 forfeiture. (*See Kevin B.*, *supra*, 118 Cal. Appl. 4th at 941 ["The only authority permitting forfeiture is section 8102, subsection (c)," which by its terms applies only to persons "who have been *released*" after having "been apprehended or detained under section 5150 *or* . . . evaluated [by] a mental health professional"] [some emphasis added].)

The superior court's order fundamentally misapplied California forfeiture law. The City of Folsom properly petitioned for forfeiture of Coleman's firearms because Coleman was detained under § 5150, and

§ 8102(h) obliged the superior court to assess the evidence before it and issue a finding regarding whether return of the firearms would pose a danger to Coleman or the public. The League requests that this Court so hold in vacating the superior court's order.

II. The superior court's nullification of § 8102(h) undermines compelling state interests

Section 8102(h) is a critical component of the legislative landscape governing weapons and mental health in California. This case well illustrates why. Many of the people police officers detain during mental health episodes have a history of disturbing behavior, and that history often includes multiple incidents involving guns. (*See Rupf*, *supra*, 85 Cal. App. 4th at 424 [noting that the "purpose of section 8102" is to protect against danger of weapon possession by those "with a history of mental disturbance"].) But not every one of those people will be suffering under the full effects of their mental illness at the precise moment they are submitted for evaluation following a § 5150 detention.

Rather, as appears to be the case here, a person's mental health crisis may have subsided at the time of evaluation, or the risk of immediate harm he poses may be temporarily abated by virtue of the fact that police officers have just confiscated all his weapons. When that happens, it is neither surprising nor unexpected that hospital staff—facing the constraints of limited budgets and space, and with due regard for the gravity of forcible institutionalization—will find that the person's involuntary admission for mental health treatment is not necessary. But that does not mean every person hospital personnel decline to admit forcibly is fit to possess dangerous weapons.

The mechanism for judicial forfeiture under § 8102(h) accounts for this reality. Rather than the snap-determination of overburdened hospital staff, § 8102(h) conditions forfeiture on the reasoned determinations of a

trial court judge following a full adversarial hearing with defined procedures. (*See Rupf*, *supra*, 85 Cal. App. 4th at 424 [approving the fact that under § 8102 "a judge, rather than a medical professional[,] makes the ultimate assessment of danger" following the parties' presentation of evidence at an adversarial hearing].) This interposing of a judicial officer and formal legal process not only protects the safety of the community by ensuring weapons remain out of the hands of people with histories of instability; it safeguards the interests of those detained for mental health reasons by limiting the extraordinary remedy of a complete five-year weapon prohibition to the more unusual cases involving forcible hospital admission.

These are not trivial interests, on either side of the equation. On the one hand, "Section 8102 directly safeguards public health and safety by allowing law enforcement officers to confiscate any firearm in the possession or control of a person who is appropriately detained or apprehended for a mental examination." (*Id.* at 423.) In enacting the statute, the Legislature reasonably concluded that "there is a significant risk" that a person detained for mental health reasons "will harm himself or others" if given back the weapons law enforcement officers seized in conjunction with the person's mental health episode. (*Id.* ["The legislative history of [§ 8102] expressly recognizes the urgency and importance of" preventing individuals with mental health issues from accessing firearms]; *see also Boggess*, *supra*, 216 Cal.App.4th at 1506 [same].)

The United States Supreme Court has similarly recognized the historical importance of state regulations prohibiting firearm possession by the mentally ill. (*See District of Columbia v. Heller* (2008) 554 U.S. 570, 626.) The Court in *Heller* noted specifically that such "longstanding prohibitions" on weapon possession by the mentally ill encapsulate a state interest so important that they do not even implicate the core Second

Amendment right to keep and bear arms. (*See id.*; *see also Mai v. United States* (9th Cir. 2020) 952 F.3d 1106, 1115 [citing *Heller* to conclude that a prohibition on weapon possession by the mentally ill "falls well outside the core of the Second Amendment right"].) California courts are in accord, recognizing that the state has a "strong interest in protecting society from the potential misuse of firearms by a mentally unstable person." (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1558; *Boggess*, *supra*, 216 Cal.App.4th at 1506.)

The Legislature has never regarded the state's interest in preventing access to firearms by mentally unstable persons as limited to situations involving forcible admission to the hospital. On the contrary, § 8102 has always explicitly provided for forfeiture as to individuals detained for mental health reasons but *not* involuntarily admitted for treatment, as evidenced by former versions of the statute that applied where the detained person "is released without commitment." (*See People v. One Ruger .22-Caliber Pistol* (2000) 84 Cal. App. 4th 310, 314 n.4 ["Before 1985, section 8102 provided that 'where the [detained] person *is released without commitment*, the confiscating law enforcement agency shall have 30 days to initiate a court hearing for a judicial determination of whether the return of such firearm would be likely to result in harm to any person . . . .'"] [emphasis added, internal markings removed].) The history of § 8102 reflects the Legislature's recognition that forcible hospital admission is not realistic in all scenarios and thus does not capture the full range of those whose mental-health histories show they should not possess firearms. (*See Rupf*, *supra*, 85 Cal. App. 4th at 424.)

In addition to upholding the compelling state interest of keeping dangerous weapons out of the hands of unstable individuals, § 8102 also protects the interests of gun owners by creating different procedures, and effecting a less significant deprivation of liberty, for those who have not

been involuntarily admitted to the hospital following a § 5150 detention. (*See Rupf*, *supra*, 85 Cal. App. 4th at 426 [contrasting § 8102 and § 8103 while observing that the latter "effects a more lengthy and severe deprivation" and contains different burdens and presumptions].) Specifically, § 8103 places the burden on the person admitted for mental health treatment to seek judicial review of the automatic five-year weapons ban that follows the hospital admission. (Welf. & Inst. Code § 8103(f)(5).) This is in contrast to the procedures that apply under § 8102 when a person has been detained but not admitted to the hospital. In that scenario, "the onus [is] upon law enforcement to initiate [] forfeiture proceeding[s]." (*One Ruger .22-Caliber Pistol*, *supra*, 84 Cal.App.4th at 314.) If the detaining law enforcement agency fails to do so, § 8102 (unlike § 8103) requires immediate return of the confiscated weapons. (*See Rupf*, *supra*, 85 Cal.App.4th at 423.)

As to the gun owner's liberty interests, § 8102(h) differs markedly from § 8103(f) in that it requires forfeiture only of the weapons confiscated in conjunction with the gun owner's mental health episode. (*See id.* at 426.) This forfeiture permanently deprives the gun owner of the right to possess the particular weapons forfeited, but it does not affect gun owner's legal right to possess or purchase firearms generally. (*See id.*; *Rodriguez v. City of San Jose* (9th Cir. 2019) 930 F.3d 1123, 1132 [citing California court of appeal's holding that the respondent whose weapons were forfeited under § 8102 "was not prohibited from acquiring or possessing firearms" generally].) By contrast, § 8103 effects a five-year ban on the gun owner's ability to possess or purchase *any* firearm. (Cal. Welf. & Inst. Code § 8103(f)(1)(A).) So not only does a person involuntarily admitted within the meaning of § 8103(f) lose his possessory right to the particular weapons seized in conjunction with his mental-health detention; that person is also

unable to purchase, own, or possess any other weapon for five years. (*See id.*)

Given the different burdens and effects of § 8102 and § 8103, it only makes sense that different events would trigger their respective provisions. (*See Rupf*, *supra*, 85 Cal. App. 4th at 425–26 [holding that § 8102 and § 8103 are "not directly comparably" given the greater infringement of liberty the latter imposes].) That is, because § 8102 imposes a less significant burden on individual liberty, it is triggered by the less significant event of a mental-health detention without forcible hospital admission. Conversely, because § 8103 imposes a greater burden on individual liberty, it is triggered only by the more significant event of forcible hospital admission. The Legislature plainly contemplated these differing outcomes and crafted the statutes to account for both.

The superior court's order here disregarded this careful legislative balancing. Rather than recognizing the significant differences between those merely detained under § 5150 and those forcibly admitted for mental health treatment, the superior court regarded those events as one and the same. Under the superior court's reading of the relevant statutes, there are only two possible outcomes when a person is detained for mental health reasons: either the person is not admitted to the hospital, in which case a city must return the seized weapons regardless of the danger it might pose; or the person is admitted, and the person is automatically banned from all weapon possession or ownership for five years. Absent from this reading is the middle ground § 8102 contemplates: a forfeiture of the particular weapons associated with the mental-health detention without an automatic five-year ban on possession or ownership.

The superior court's nullification of § 8102(h) seriously undermines the purpose and design of California weapons forfeiture laws. And it cannot be reconciled with basic separation-of-powers principles. (*See California*

Corr. Peace Officers Assn. v. Dep't of Corr. (1999) 72 Cal. App. 4th 1331, 1349 ["[A] court's construction of a statute to nullify another legislative act trespasses on the Legislature's province."].) To forestall these ills, the League requests that this Court vacate the superior court's order and make clear in a published opinion that judicial forfeiture under § 8102(h) does not require involuntary hospital admission.

Conclusion

The League respectfully requests that this Court vacate the order of the superior court and remand with instructions that the court proceed with a hearing to determine danger as set forth in § 8102(h).

Respectfully submitted,

NORA FRIMANN, City Attorney

Dated: October 22, 2020

By: */s/ Matthew Pritchard*
MATTHEW PRITCHARD
Senior Deputy City Attorney

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF COMPLIANCE

I, Matthew Pritchard, counsel for Amicus Curiae, League of California Cities, hereby certify under California Rule of Court 8.883(b)(1) that according to my computer program, this brief has a typeface of 13 points and a word count of 5,986, exclusive of tables, the cover sheet and application/statement of interest, signature blocks, and any required certificates.

Respectfully submitted,

NORA FRIMANN, City Attorney

Dated: October 22, 2020

By: /s/ Matthew Pritchard
MATTHEW PRITCHARD
Senior Deputy City Attorney

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

PROOF OF SERVICE
(By TrueFiling)

CASE NAME: Folsom Police Department and City of Folsom v. Mark Coleman

COURT OF APPEALS CASE NO.: C091173
(Superior Court, County of Sacramento Case No.: 34-2019-20000415)

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 East Santa Clara Street, San Jose, California 95113-1905, and is located in the county where the service described below occurred.

I am familiar with the business practice of the Office of the City Attorney for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the City Attorney is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 22, 2020, I caused to be served the attached:

AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PLAINTIFFS-APPELLANTS FOLSOM POLICE DEPARTMENT AND CITY OF FOLSOM

by transmitting a true copy via this court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 22, 2020, at San Jose, California.

/s/ Sarah Tapia
Sarah Tapia