

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE AMENDED PARAMETERS AND  
GUIDELINES:

Welfare and Institutions Code section 6602;  
Statutes 1995, Chapter 762 (SB 1143); Statutes  
1995, Chapter 763 (AB 888); Statutes 1996,  
Chapter 4 (AB 1496);  
*Sexually Violent Predators* (CSM-4509), As  
Modified by:  
Proposition 83, General Election,  
November 7, 2006  
Period of reimbursement begins on July 1, 2011.

Case No.: CSM-4509 (12-MR-01)

*Sexually Violent Predators*

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted May 30, 2014)*

*(Served June 3, 2014)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines amendment during a regularly scheduled hearing on May 30, 2014. Timothy Barry appeared on behalf of the San Diego County Counsel's Office, the San Diego Public Defender's Office, and the San Diego County Sheriff; and Edward Jewik appeared on behalf of the County of Los Angeles. Lee Scott and Michael Byrne appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the amended parameters and guidelines and statement of decision by a vote of seven to zero.

**I. SUMMARY OF THE MANDATE**

These amended parameters and guidelines pertain to the *Sexually Violent Predators* test claim, CSM-4509, as modified by the Commission's new test claim decision adopted December 6, 2013, pursuant to a redetermination request (12-MR-02) filed by the Department of Finance (Finance). Based on the filing date of the redetermination request, the period of reimbursement for these amended parameters and guidelines begins on July 1, 2011.<sup>1</sup>

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, established civil commitment procedures for the continued detention and treatment of sexually violent offenders following

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<sup>1</sup> Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

their completion of a prison term for certain sex offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the inmate is a sexually violent predator, as defined in the statutes. If the inmate accused of being a sexually violent predator is indigent, the test claim statutes require counties to provide the indigent with assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.<sup>2</sup>

The new test claim decision, adopted December 6, 2013, provides continuing reimbursement only for preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing, and for transportation between a courthouse and a secure facility for purposes of the probable cause hearing.<sup>3</sup> The Commission, pursuant to the redetermination decision authorized by Government Code section 17570, found that both of these activities were imposed by the Legislature, but that all other activities previously approved were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f).<sup>4</sup>

## **II. PROCEDURAL HISTORY**

On June 25, 1998, the Commission adopted a test claim statement of decision approving reimbursement for certain activities of the Sexually Violent Predators program.<sup>5</sup> On September 24, 1998, the Commission adopted parameters and guidelines.<sup>6</sup> On October 30, 2009, the parameters and guidelines were amended pursuant to a boilerplate language amendment request brought by the State Controller's Office.<sup>7</sup>

On January 15, 2013, Finance filed a request for redetermination of the Sexually Violent Predators mandate, CSM-4509.<sup>8</sup> On December 6, 2013, the Commission adopted a new test claim decision to reflect the state's modified liability.<sup>9</sup> On December 13, 2013, Commission staff issued a draft expedited amendment to parameters and guidelines, in accordance with the Commission's new test claim decision.<sup>10</sup> On December 27, 2013, the County of San Diego

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<sup>2</sup> Exhibit A, Test Claim Statement of Decision, adopted June 25, 1998, at p. 13.

<sup>3</sup> Exhibit E, New Test Claim Statement of Decision, at pp. 54-55.

<sup>4</sup> *Ibid.*

<sup>5</sup> Exhibit A, Test Claim Statement of Decision.

<sup>6</sup> Exhibit B, Parameters and Guidelines, adopted September 24, 1998, at pp. 3-5.

<sup>7</sup> Exhibit C, Amended Parameters and Guidelines, adopted October 30, 2009.

<sup>8</sup> Exhibit D, Redetermination Request, dated January 15, 2013.

<sup>9</sup> Exhibit E, New Test Claim Statement of Decision.

<sup>10</sup> Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.

submitted written comments on the draft expedited amendment to parameters and guidelines.<sup>11</sup> On January 2, 2014, the State Controller’s Office submitted written comments on the draft expedited amendment to parameters and guidelines.<sup>12</sup>

At the March 28, 2014 Commission hearing on these parameters and guidelines, representatives from the County of San Diego and the County of Los Angeles introduced oral evidence that they assert supports a finding that the housing of potential sexually violent predators pending the probable cause hearing is a reimbursable reasonably necessary activity. Since this was not analyzed in any detail in the proposed parameters and guidelines and statement of decision, staff recommended, and the Commission decided, that the decision on these parameters and guidelines should be continued to the following hearing, and a revised decision issued, reflecting the new information obtained at the hearing and any additional briefing or information submitted by parties and interested parties following the hearing.

Accordingly, on April 4, 2014, Commission staff issued a Request for Additional Briefing and Evidence on Costs Pertaining to Housing Potential Sexually Violent Predators.<sup>13</sup> On April 21, 2014, the transcript of the March 28, 2014 Commission hearing was received.<sup>14</sup> On April 25, 2014, the County of San Diego submitted additional comments in response to Commission staff’s request.<sup>15</sup> On April 28, 2014, the County of Los Angeles submitted late comments in response to Commission staff’s request.<sup>16</sup>

### **III. COMMISSION FINDINGS**

#### **A. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17570(f) provides that redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.<sup>17</sup> Based on the January 15, 2013 filing date,<sup>18</sup> eligibility for reimbursement or loss of reimbursement under the new test claim decision adopted pursuant to that request is established beginning July 1, 2011.

#### **B. Reimbursable Activities (Section IV. of Parameters and Guidelines)**

The new test claim decision adopted by the Commission on redetermination states that only the following two activities remain eligible for reimbursement:

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<sup>11</sup> Exhibit G, County of San Diego Comments.

<sup>12</sup> Exhibit H, Controller’s Comments.

<sup>13</sup> Exhibit J, Commission Request for Additional Briefing.

<sup>14</sup> Exhibit K, Transcript of Commission Hearing, March 28, 2014. Note that this transcript will not be reviewed or adopted by the Commission until the May 30, 2014 Commission meeting.

<sup>15</sup> Exhibit L, County of San Diego Response to Commission Request.

<sup>16</sup> Exhibit M, County of Los Angeles Response to Commission Request.

<sup>17</sup> Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

<sup>18</sup> Exhibit D, Redetermination Request.

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Transportation for each potential sexually violent predator to and from a secured facility only to the probable cause hearing on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

*This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial.*<sup>19</sup>

The test claim decision further states that “the following activities *do not constitute* reimbursable state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(f), beginning July 1, 2011:”Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)<sup>20</sup>

These findings were based on the Commission’s analysis in the new test claim decision<sup>21</sup> of transportation and housing activities approved in the original test claim decision.<sup>22</sup> The Commission found that the purpose and intent of Proposition 83 is “to protect the public from dangerous felony offenders with mental disorders and to provide mental health treatment for their disorders.”<sup>23</sup> The proper operation of the SVP program requires that “persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.” Therefore, “there is ample reason to hold individuals awaiting trial, rather than releasing those individuals to parole.” However, the Commission further found that “holding a probable cause hearing for each alleged SVP is a *requirement mandated by the Legislature*, and not necessary to implement Proposition 83,” and therefore “transportation to and from the court for a *state-mandated probable cause hearing* is not necessary to implement the ballot measure approved by the voters, and must remain a reimbursable state-mandated cost.” The Commission did not expressly address whether housing pending a *probable cause hearing* was severable from housing pending *trial*, but expressly denied housing pending trial, as shown above.<sup>24</sup>

Draft expedited amended parameters and guidelines were subsequently issued for comment, which identified the two activities for reimbursement and further stated that housing costs pending the probable cause hearing and trial were not reimbursable, as follows:

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<sup>19</sup> Exhibit E, New Test Claim Decision, at p. 57.

<sup>20</sup> Exhibit E, New Test Claim Decision, at p. 57.

<sup>21</sup> Exhibit E, New Test Claim Decision, at p. 39.

<sup>22</sup> Exhibit A, Test Claim Decision.

<sup>23</sup> *People v. McKee* (2010) 47 Cal.4th 1172, at p. 1203.

<sup>24</sup> Exhibit E, New Test Claim Decision, at p. 39.

- a. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  - a. Secretarial, paralegal and investigator services;
  - b. Copying and making long distance telephone calls; and
  - c. Travel.
- b. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.
 

*This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.*<sup>25</sup>

In comments submitted on the draft expedited amended parameters and guidelines, the County of San Diego urged the Commission to consider additional “reasonably necessary” activities related to the two activities identified above. Specifically, the County asserted that preparation for a probable cause hearing by indigent defense counsel also requires the “retention of qualified experts, investigators and professionals,” and that costs related to housing potential sexually violent predators pending a probable cause hearing should continue to be reimbursable.<sup>26</sup> In addition, the County of Los Angeles entered testimony at the March 28, 2014 hearing, and both the County of Los Angeles and the County of San Diego submitted additional comments in response to the Commission’s request for comment, in which the counties seek to show that housing pending or during the state-mandated probable cause hearing is reasonably necessary to implement the state mandated program and continues to be reimbursable.

Government Code section 17557 provides that “[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>27</sup> The Commission’s regulations provide that parameters and guidelines shall include “a description of the most reasonable methods of complying with the mandate.” “‘The most reasonable methods of complying with the mandate’ are those methods

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<sup>25</sup> Exhibit F, Draft Expedited Parameters and Guidelines Amendment, at pp. 6-7.

<sup>26</sup> Exhibit G, County of San Diego Comments, at pp. 2-3.

<sup>27</sup> Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

not specified in statute or executive order that are necessary to carry out the mandated program.”<sup>28</sup>

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.<sup>29</sup> Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;<sup>30</sup> and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>31</sup> The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”<sup>32</sup> Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if they are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”<sup>33</sup>

The Commission’s regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice “in the manner and of such information as is described in Government Code section 11515.”<sup>34</sup> Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

**1) *Activities and costs related to housing potential sexually violent predators pending trial are expressly denied in the test claim decision, but activities and costs related to housing potential sexually violent predators pending a probable cause hearing are reasonably necessary to comply with the mandate and remain reimbursable.***

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<sup>28</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>29</sup> Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

<sup>30</sup> *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5<sup>th</sup> Dist. 1998) 202 Cal.App.3d 791, at p. 805.

<sup>31</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4<sup>th</sup> 330, 335.

<sup>32</sup> *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

<sup>33</sup> *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

<sup>34</sup> Code of Regulations, title 2, section 1187.5.

In the new test claim decision, the Commission found that costs to house a potential sexually violent predator at a secure facility *pending trial* were not reimbursable, because the “purpose and intent of Proposition 83 is to protect the public from dangerous felony offenders...” and the proper operation of the program “requires therefore that persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.”<sup>35</sup> Therefore, the Commission found that holding potential sexually violent predators in custody *pending trial* was an essential function of the program as enacted by the voters, and thus the attendant housing costs are no longer reimbursable pursuant to Government Code section 17556(f). However, the Commission also found that conducting a probable cause hearing was not necessary to implement the voter-enacted ballot measure (Proposition 83), and therefore costs relating to a probable cause hearing were mandated by the state and remained reimbursable on an ongoing basis.

Accordingly, the central issue for determining whether the costs of housing pending and during a potential SVP’s state-mandated probable cause hearing are necessary to carry out the mandated program<sup>36</sup> is whether such costs are severable from housing costs pending and during that person’s non-reimbursable SVP trial. The Counties of San Diego and Los Angeles assert that housing costs pending and during an SVP probable cause hearing *are* severable, for purposes of mandate reimbursement, from housing costs pending and during an SVP trial and are necessary for the state-mandated probable cause hearing.<sup>37</sup>

The County of San Diego, in its comments on the draft expedited parameters and guidelines, argues that costs related to housing each potential sexually violent predator during the probable cause hearing should continue to be reimbursable. The County states that “inmates that are the subject of the SVP proceedings are housed by the California Department of Corrections and Rehabilitation at facilities throughout the state as far east as Calipatria and as far north as Coalinga.” When an inmate is brought back to San Diego the County for trial on the issue of whether he or she is a sexually violent predator, the inmate is “generally brought to the San Diego Central Jail, processed and then transferred to and housed at the George Bailey Detention Facility in Otay Mesa.”<sup>38</sup> The County asserts that its “Sheriff is responsible for housing these inmates for the duration of their stay in San Diego County, which often lasts several months.”<sup>39</sup>

On April 25, 2014, the County of San Diego filed additional comments and further clarified and explained these assertions, by submitting a new declaration from a member of the San Diego County Public Defender’s Office. The declaration of Mr. Michael Ruiz states that “[g]enerally, the alleged SVP is returned to Coalinga State Hospital after the probable cause determination, but often there are occasions when the alleged SVP will remain in the custody of the Sheriff,

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<sup>35</sup> Exhibit E, New Test Claim Statement of Decision, at p. 37.

<sup>36</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>37</sup> See Exhibit K, Transcript of Commission Hearing, March 28, 2014.

<sup>38</sup> Exhibit G, County of San Diego Comments, at p. 3.

<sup>39</sup> Exhibit G, County of San Diego Comments, at p. 9.

pending trial.” The declaration further asserts that “[a]s a result of the provisions of [Welfare and Institutions] Code section 6602 requiring a probable cause hearing, alleged SVPs are either required to be transported and housed by the Sheriff two different times, once for the Probable Cause hearing and once for the actual trial, or the alleged SVP remains in the custody of the Sheriff for an extended period of time that would not have been necessary but for the probable cause hearing requirement.”<sup>40</sup> San Diego thus concludes that “[h]ousing inmates for their probable cause hearings is a vital and necessary component to carrying out the balance of the mandated activities...and should continue to be reimbursable.”

The County of Los Angeles also filed a declaration from its Public Defender’s Office, on April 28, 2014. The declaration of Mr. Craig Osaki states directly as follows:

4. I presented arguments on behalf of the Los Angeles County Public Defender's Office at the March 28, 2014 Commission on State Mandates hearing regarding the proposed Parameters and Guidelines for the Sexually Violent Predator Program.
5. During the course of the Hearing, the Commission staff appeared to base its recommendation on the assumption that the potential S.V.P. is held in the local county jail from the time the person is transferred from state prison until he is committed to the State Hospital at trial.
6. This assumption is not correct in all cases.
7. Welfare and Institutions Code Section 6602.5(a) provides that “No person may be placed in a state hospital pursuant to the provisions of this article until there has been a probable cause determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.”
8. Further, Welfare and Institutions Code Section 6600.05(a) states that “Coalinga State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article ...”
9. Also, in the case of *People v. Ciancio* (2003) 109 Cal.App.4th 175, the Court construed Section 6602.5 to permit an alleged SVP to be placed in the State Hospital after the probable cause hearing determination.
10. In Los Angeles County, the general practice of the Court is to transfer the alleged SVP to Coalinga State Hospital after the probable cause determination (pursuant to Welfare and Institutions Code Section 6602.5 and the *Ciancio* decision.) Rarely does an individual remain in County jail until trial.
11. When the parties are ready for trial, the alleged SVP is ordered back to Los Angeles County Jail from Coalinga State Hospital. He is housed there temporarily while the trial proceedings commence.

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<sup>40</sup> Exhibit L, County of San Diego Response to Commission Request for Additional Briefing, at pp. 5-6.

Based on the plain language of the Welfare and Institutions Code section 6601 as pled in the original test claim, the SVP process is required to be initiated “at least six months prior” to an individual’s scheduled date of release from prison.<sup>41</sup> The individual is then screened by the Department of Corrections and Rehabilitation, and evaluated by the Department of Mental Health (DMH). If DMH determines that the person is a sexually violent predator, as defined, the director of DMH shall forward a request to the designated county counsel. If the county counsel concurs with the recommendation, he or she shall file a petition with the superior court in the county in which the person was convicted.<sup>42</sup> Then, “[p]ursuant to section 6601.5...the court must review the petition to determine whether, on its face, it contains sufficient facts that, if true, would support a finding of probable cause...” If a judge determines that the petition is sufficient on its face, “the judge shall order that the person be detained in a secure facility until a [probable cause] hearing can be completed pursuant to Section 6602.”<sup>43</sup> That probable cause hearing, pursuant to section 6601.5, “shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.”<sup>44</sup> Based on the evidence submitted by the County of Los Angeles and the County of San Diego, and certain examples from relevant case law,<sup>45</sup> often the state-mandated probable cause hearing is not conducted within ten days from the date of the court’s order of detention. The County of San Diego states that the average period in custody prior to a potential SVP’s probable cause hearing is 120 days.<sup>46</sup> After the probable cause hearing, the counties indicate that a potential SVP, if not released or paroled, is transferred back to state custody while awaiting trial,<sup>47</sup> and “[r]arely does an individual remain in County jail until trial.”<sup>48</sup> This is consistent with the court’s interpretation of section 6602.5 in *People v. Ciancio*, which provides authority for a trial court to order a potential SVP to be transferred to a state hospital for treatment after a probable cause hearing,<sup>49</sup> and with the plain language of section 6600.05, which requires that Coalinga State Hospital be used whenever a person is committed to a secure facility for mental health treatment.<sup>50</sup>

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<sup>41</sup> Welfare and Institutions Code section 6601 (as amended, Stats. 1996, ch. 4 (AB 1496)).

<sup>42</sup> *Ibid.*

<sup>43</sup> *People v. Ciancio* (2003) 109 Cal.App.4th 175, at p. 184 [citing and quoting Welfare and Institutions Code section 6601.5].

<sup>44</sup> Welfare and Institutions Code section 6601.5 (as amended, Stats. 2000, ch. 41 (SB 451)).

<sup>45</sup> See, e.g., *People v. Castillo* (2010) 49 Cal.4th 145.

<sup>46</sup> Exhibit L, County of San Diego Response to Commission Request for Additional Briefing, at pp. 5; 7.

<sup>47</sup> Exhibit L County of San Diego Response to Commission Request for Additional Briefing, at p. 7.

<sup>48</sup> Exhibit M, County of Los Angeles Response to Commission Request for Additional Briefing, at p. 3.

<sup>49</sup> (2003) 109 Cal.App.4th at p. 184.

<sup>50</sup> Welfare and Institutions Code section 6600.05 (as amended, Stats. 2012, ch. 24).

The above-described declarations, considered in light of the Commission’s previous findings with respect to this program, the plain language of the statutes, and the interpretations of the courts, constitute substantial evidence supporting reimbursement for housing costs related to state-mandated probable cause hearings. The weight of the evidence submitted, and the statutes and case law of which the Commission takes official notice, demonstrate that housing is required prior to the state-mandated probable cause hearing, and that the period of time that a potential SVP is housed pending and during the individual’s probable cause hearing is logically and legally distinct from the period of time that the person is housed pending trial. Welfare and Institutions Code section 6601.5 further provides that the requirement to house the potential SVP begins following the court’s order that the person be detained in a secure facility until a probable cause hearing can be completed pursuant to Section 6602. The evidence and case law also indicates that, in the usual case, an individual is either released (sometimes paroled) or transferred back to state custody for treatment after a probable cause hearing.<sup>51</sup> After the probable cause hearing, if the individual is being held, it is either pending trial or to complete their sentence and no further reimbursement is warranted, pursuant to Government Code section 17556(f).<sup>52</sup> No other contradictory evidence has been introduced, and therefore the Commission’s decision to amend the parameters and guidelines to include housing costs related to the state-mandated probable cause hearing is supported by substantial evidence.

Based on the foregoing, the Commission amends the parameters and guidelines as follows:

~~Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator.~~

- a. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.*

- b. Housing for each potential sexually violent predator from the time of the court’s order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

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<sup>51</sup> See Exhibit L, County of San Diego Response to Commission Request for Additional Information and Briefing, at p. 7; *People v. Ciancio* (2003) 109 Cal.App.4th 175, at p. 184.

<sup>52</sup> See Exhibit E, New Test Claim Decision, at p. 57.

Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).

**2) Activities and costs related to retention of necessary experts, investigators, and professionals for preparation for a probable cause hearing are reasonably necessary to comply with the mandate and should remain reimbursable.**

In addition to the costs of housing inmates pending probable cause hearings, the County urges the Commission to consider providing reimbursement in the parameters and guidelines for “costs the county’s designated counsel and indigent defense counsel incur for retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing.” The County asserts that “[e]ven though these costs are not expressly identified as reimbursable costs in the original test claim decision, these costs have been and should continue to be reimbursed to claimants by the state.” The County “requests that the [C]ommission specifically find that these costs continue to be reimbursable to local agencies pursuant to the SVP mandate,” because, the County asserts, “retention of qualified experts, investigators and professionals for probable cause hearings is critical to the prosecution and defense of individuals at the probable cause hearing.”<sup>53</sup>

The County submits the declaration of Mr. Michael Ruiz, a Deputy Public Defender for the County of San Diego. Mr. Ruiz states that “retention of necessary experts, investigators and professionals for purposes of preparing for a probable cause hearing can be critical to the defense of individual [sic].”<sup>54</sup> In addition, Mr. Ruiz states that “[t]he probable cause hearing is a critical stage of any SVP civil commitment proceeding, and that “SVP litigation is a high-end forensic practice... and the assistance of qualified professionals is critical to the preparation of these cases.”<sup>55</sup> Mr. Ruiz also states that “[a]t the probable cause stage of SVP proceedings, practitioners for both sides must be able to independently assess both the diagnostic and the relative risk conclusions reached by the designated DSH evaluators.”<sup>56</sup>

No evidence has been filed to rebut this declaration.

Therefore, based on the evidence in the record, the Commission finds the retention of necessary experts, investigators, and professionals, is reasonable necessary for the defense counsel to prepare for the probable cause hearing in accordance with Government Code section 17557 and section 1183.1(a)(4) of the Commission’s regulations. Thus, the activity of “Preparation and

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<sup>53</sup> Exhibit G, County of San Diego Comments, at p. 2.

<sup>54</sup> Exhibit G, County of San Diego Comments, at pp. 6-7.

<sup>55</sup> Exhibit G, County of San Diego Comments, at p. 7.

<sup>56</sup> Exhibit G, County of San Diego Comments, at p. 7.

attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing” is modified to include the retention of necessary experts, investigators, and professionals for preparation. However, the amended activity may not be interpreted to provide reimbursement for preparation for trial; the amended activity shall provide as follows:

1. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:

- a. Secretarial, paralegal and investigator services;
- b. Copying and making long distance telephone calls; and
- c. Travel.
- d. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

**B. CONCLUSION**

Based on the foregoing analysis, the Commission hereby adopts this statement of decision and attached proposed amendment to the parameters and guidelines.

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*(Adopted May 30, 2014)*

*(Served June 3, 2014)*

*(Corrected February 27, 2015)*

**CORRECTED PARAMETERS AND GUIDELINES AMENDMENT**

On May 30, 2014, the Commission on State Mandates (Commission) adopted the attached amended parameters and guidelines. Pursuant to California Code of Regulations, title 2, section 1187.11(b), clerical errors were corrected to remove language erroneously left in strike out and underline format under section IV. B. Reimbursable Activities and section VII. Offsetting Revenues and Reimbursements.



Heather Halsey, Executive Director

Corrected: February 27, 2015  
Amended: May 30, 2014  
Amended: October 30, 2009  
Adopted: September 24, 1998

## AMENDMENT TO PARAMETERS AND GUIDELINES

Welfare and Institutions Code Section 6602

Statutes 1995, Chapter 762  
Statutes 1995, Chapter 763  
Statutes 1996, Chapter 4

As Modified by:  
Proposition 83, General Election, November 7, 2006

*Sexually Violent Predators*

CSM-4509  
(amended by 05-PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011.

### **I. Summary of the Mandate**

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4 established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission on State Mandates (Commission) adopted a statement of decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601(i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601(i).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b) through (d), and 6608(a) through (d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

On November 7, 2006, the voters approved Proposition 83, also known as Jessica’s Law, which amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the *Sexually Violent Predators*, CSM-4509 test claim.

On January 15, 2013, the Department of Finance filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570. A new test claim decision was adopted December 6, 2013, and these parameters and guidelines were amended, as follows, pursuant to that decision.

## **II. Eligible Claimants**

Any county or city and county which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## **III. Period of Reimbursement**

Government Code section 17570(f) provides that a request for adoption of a new test claim decision (mandate redetermination) shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year. The request for mandate redetermination was filed on January 15, 2013, establishing eligibility for reimbursement or loss of reimbursement based on a new test claim decision on or after July 1, 2011.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. Reimbursable Activities**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities.

Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities only are eligible for reimbursement:

- A. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  1. Secretarial, paralegal and investigator services;
  2. Copying and making long distance telephone calls; and
  3. Travel.
  4. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

- B. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial.*

- C. Housing for each potential sexually violent predator from the time of the court's order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

*Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state facility housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).*

## **V. Claim Preparation and Submission**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### **2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### **3. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on

the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

#### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

### B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, Appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. Record Retention**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If the State Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. Offsetting Revenues and Reimbursements**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

### **VIII. State Controller's Claiming Instructions**

Pursuant to Government Code section 17558(b), the State Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the statements of decision on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

### **IX. Remedies Before the Commission**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the State Controller to modify the claiming instructions and the State Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

### **X. Legal and Factual Basis for the Parameters and Guidelines**

The statements of decision for the first and second hearings for the request for mandate redetermination and amendment to parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the amended parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 27, 2015, I served the:

**Corrected Parameters and Guidelines Amendment**

*Sexually Violent Predators*, CSM-4509 (12-MR-01)

Welfare and Institutions Code section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);

Statutes 1996, Chapter 4 (AB 1496)

As Modified by: Proposition 83, General Election, November 7, 2006

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 27, 2015 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/19/15

**Claim Number:** CSM-4509 (12-MR-01)

**Matter:** Sexually Violent Predators

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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