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March 25, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Mandate Determination Request 12-MR-01,
Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

In Alameda County there are approximately 50 cases pending in which the District Attorney has filed a petition to have an individual committed for an indefinite period for treatment as a sexually violent predator. This office represents almost all of those individuals. I am writing in response to the notice from the Commission dated January 24, 2013, soliciting responses to the California Department of Finance's Mandate Redetermination Request, 12-MR-01, Sexually Violent Predators CSM-4509, dated January 15, 2013.

This office strongly opposes the Department of Finance's request to redetermine the Sexually Violent Predator Mandate (CSM-4509) on the following grounds: (1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, suspended any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the Department of Finance's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.

Those grounds of opposition are thoroughly explained in the letter to you from the California Public Defenders Association dated March 18, 2013. A copy of that letter is attached. For all the reasons stated there, this office requests the Commission to deny the Department of Finance's request for a redetermination.

Sincerely,

BRENDON D. WOODS
ALAMEDA COUNTY PUBLIC DEFENDER

CPDA

A Statewide Association of Public Defenders and Criminal Defense Counsel

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March 18, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Mandate Redetermination Request 12-MR-01
Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

The California Public Defenders Association (CPDA) is the largest association of criminal defense attorneys and public defenders in the State of California with a membership consisting of over 3,700 public defenders and attorneys in private practice. An integral component of CPDA is the California Council of Chief Public Defenders (CCCD). The CCCD is comprised of the county public defender department heads who represent over 90 percent of all criminal cases processed through the California judicial system and are responsible for supervising the work performed by over 2,600 defense attorneys. These department heads meet regularly to discuss management, legislative, and policy issues.

On June 25, 1988, the California Commission on State Mandates (CSM) adopted the Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608.

On January 24, 2013, the California Commission on State Mandates (CSM) issued a notice soliciting responses to the California Department of Finance's (DOF) January 15, 2013, Mandate Redetermination Request, 12-MR-01, Sexually Violent Predators CSM-4509. This letter is written in response to that notice.

CPDA opposes the DOF's request to redetermine the Sexually Violent Predator Mandate (CSM-4509). The basis for CPDA's objections are: (1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVPA) either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law"

as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.

(1) The 2012 Legislative Amendment and Re-Enactment of the SVPA Either Confirmed the Viability of the Sexually Violent Predator Mandate (CSM-4509), or, Arguendo, Superceded Any Impact That Proposition 83 May Have Affected on the Mandate.

Subsequent to the passage of Proposition 83 in 2006, the California Legislature in 2012 amended the SVPA in three separate pieces of legislation. Welfare and Institutions Code section 6603, the operative section providing for the defense of an accused at trial, provides: "A person subject to this article, shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf." (§ 6603, subd. (a).)

Significantly, subsequent to the passage of Proposition 83 in 2006, Welfare and Institutions Code section 6603 was amended twice by the Legislature in 2012. (Stats.2012, ch. 440 (A.B. 1488) § 66, eff. Sept. 22, 2012; Stats.2012, ch. 790 (S.B. 760) § 1, eff. Sept. 29, 2012.) Additionally, Welfare and Institutions Code section 6602, which provides for the assistance of counsel for the accused at the probable cause hearing, was also amended by the Legislature in 2012. (Stats.2012, ch. 24 (A.B. 1470) § 141, eff. June 27, 2012.) Finally, in 2012 the Legislature amended ten additional Welfare and Institutions Code sections pertaining to the SVPA – i.e., sections 6600, 6600.5, 6601, 6601.3, 6602, 6602.5, 6604, 6605, 6606, and 6608. (Stats.2012, ch. 24 (A.B. 1470) eff. June 27, 2012.)

The enactment of A.B. 1488, A.B. 1470, and S.B. 760 in 2012 pertaining to the SVPA result in a cost mandated by the state as defined by Government Code section 17514. The entire text of the sections amended by legislation in 2012, including the portions not amended, was reenacted by the Legislature pursuant to Article IV, section 9, of the California Constitution. The remainder of the SVPA sections that were not expressly included in the 2012 legislation are, nevertheless, necessary to implement the 2012 legislation under Government Code section 17556, subdivision (f), and therefore are mandated by statute and thus reimbursable under California Constitution Article XIII B, section 6. Therefore, Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state.

(2) Misrepresentation, Unclean Hands, and Estoppel Bar the DOF's Redetermination Request

In a letter dated September 2, 2005, addressed to the Honorable Bill Lockyer, California Attorney General, issued pursuant to Elections Code section 9005, authored by Elizabeth G. Hill, Director of the Legislative Analyst's Office (LAO) and Tom Campbell, Director of the DOF, the authors stated no less than four times Proposition 83 would not affect state reimbursement to counties:

"State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) **reimburse counties for their costs for participation in the SVP commitment process**." (*Id.*, at p. 4, Emphasis added.)

"Fiscal Impact on Local Governments. This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, **with these costs subsequently being reimbursed by the state**." (*Id.*, at p. 5, Emphasis added.)

"SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. **Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.** (*Id.*, at pp. 5-6, Emphasis added.)

"SUMMARY OF FISCAL EFFECT. . . [¶] Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. **The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state**. (*Id.*, at p. 6, Emphasis added.)

Given the DOF's stated position that the passage of Proposition 83 would not affect state reimbursement to counties, the DOF has "unclean hands" and should be estopped from currently asserting the Sexually Violent Predator mandate (CSM-4509) is no longer a cost mandated by the state.

The resulting financial analysis of Proposition 83 included in the voter materials for Proposition 83 was misleading. The LAO financial analysis failed to discuss any potential financial impact on mandates and resulting added costs to the counties. Specifically, the Analysis stated that the "fiscal effects" on "State and Local Governments" were only that "[t]here could be other savings to the extent that offenders imprisoned for longer periods require fewer government services, or commit fewer crimes that result in victim related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown." (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Not only was the electorate misled by the foregoing analysis and the September 2, 2005, letter, so were local government officials. Had local government officials not been lulled into a false sense of security, it is reasonably probable they would have publically opposed Proposition 83 given the financial ramifications due to the loss of mandate monies now proposed by the DOF. It is also reasonably probable that the electorate would have rejected Proposition 83 due to the same concerns. Furthermore, the probability of defeat would have increased had the electorate been accurately apprised of what law they were voting to replace – i.e., S.B. 1128 and not the language included in the ballot proposition, as discussed in the next section.

(3) Proposition 83 did not effectuate a "Subsequent Change in the Law" as Contemplated by Government Code Section 17570

The DOF's obscuration of Proposition 83 continues in its January 15, 2013 request for a redetermination of the SVP Mandate (CSM-4509). The request is misleading because the statutory language quoted from the SVPA by the DOF's January 15, 2013, request, as well as that include in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006.

On August 31, 2006, the Legislature amended the SVPA in anticipation of Proposition 83. (Stats.2006, ch. 337 (S.B. 1128) § 62, eff. Sept. 20, 2006.) S.B. 1128 contained many of the same or substantially similar amendments to the SVPA as did Proposition 83, for example, providing for indeterminate commitments and expansion of the list of qualifying offenses. Therefore, Proposition 83 does not constitute a "subsequent change in the law" as contemplated by Government Code section 17570.

Had the electorate been informed of the true state of the law it is reasonably probably that Proposition 83 would have failed especially given the potential loss of mandate monies that would have to be absorbed on the local level. The only component relating to the SVPA that Proposition 83 promoted to the electorate was the imposition of indeterminate commitments, which was already the law under S.B. 1128.

The "Findings and Declarations" in Section 2 of Proposition 83, subdivision (k), contains the only statement specifically pertaining to the SVPA, states "[t]he People find and declare each of the following:... (k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person." (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Apart from the conversion of commitments under the SVPA from two years to indeterminate, Proposition 83's Findings and Declarations readily demonstrate by its silence that the remaining changes to the Act were merely considered to be secondary, technical, and *de minimis*.

Significantly, Proposition 83 does not constitute a "subsequent change in the law" because the intent, purpose, and focus of the SVPA – i.e., protection of society from individuals convicted of sex offense and treatment – under the SVPA as originally enacted, S.B. 1128, and Proposition 83 are consistent. (Cf. *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138 and *In re Lucas* (2012) 53 Cal.4th 839.)

Additionally, Proposition 83 also does not constitute a "subsequent change in the law" because in 2006 the SVPA contained 22 sections. Of those 22 sections, Proposition 83 only amended 7 of those sections. Thus, Proposition 83 left 15 sections intact, including Welfare and Institutions Code sections 6602 and 6603 pertaining to the right to counsel and right to obtain experts at the probable cause hearing and at trial. Of the 7 sections Proposition 83 amended, 5 sections were either identical or substantially similar to those enacted by S.B. 1128 – i.e., Welfare and Institutions Code sections 6601, 6604, 6604.1, 6605, and 6608. The remaining 2 section Proposition 83 amended contained relatively insignificant or technical changes.

Finally, Government Code 17570, subdivision (b), provides "[t]he commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state's liability for that test claim decision. . . has been modified based on a subsequent change in the law." In fact, the "state's liability" for local costs associated with prosecuting cases filed under the SVPA has decreased. In its January 2010 Recommendations Report, the California Sex Offender Management Board found that while

costs regarding the pre-filing intake process had significantly increased, the actual number of cases prosecuted under the SVPA decreased, "[t]wo years and eight months into the implementation of Proposition 83, the number of persons committed on average dropped from approximately 4 per month, to 3 per month." (Id., at p. 61.)

(4) Government Code section 17570 Is Unconstitutional

In *California School Boards Ass'n v. State* (2009) 171 Cal.App.4th 1183 (*California School Boards*), the court struck down legislation (Stats.2005, ch. 72 (A.B. 138) §17b) directing the CSM to redecide cases that were already final. It held "such direction exceeds the Legislature's power" and violates the California Constitution's separation of powers doctrine (Cal. Const., art. III, § 3). (Id., at p. 1189.) However, in dicta the court left open the question whether or not "[o]ver time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission's decision. While decisions of the Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. . . We conclude that we need not decide this question." (Id., at p. 1202.)

Subsequent to the decision in *California School Boards*, Government Code Section 17570 was enacted which permits "The commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state's liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law." (Stats.2010, ch. 719 (S.B. 856) § 33, eff. Oct. 19, 2010.)

The DOF under the apparent authority of the 2010 amendment to Government Code Section 17570, has requested the CSM to redetermine the Sexually Violent Predator mandate (CSM-4509). CPDA submits that the judicially untested Government Code Section 17570, violates the California Constitution's separation of power doctrine and the decision in *California School Boards*. (Cal. Const., art. III, § 3; *California School Boards Ass'n v. State, supra*, 171 Cal.App.4th 1183.)

Lastly, the term "subsequent change in the law" as used in Government Code section 17570 is undefined. As a result, it is unconstitutionally vague and will result in arbitrary and capricious application. For example, does "subsequent change in the law" merely contemplate a change in punctuation, a changing of the law's intent, or something in between in order to trigger the redetermination of an existing mandate?

Conclusion

Based on the forgoing analysis, CPDA respectfully requests the CSM to deny the DOF's January 15, 2013, request for a redetermination of the June 25, 1988, the CSM's Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509).

Sincerely,

Juliana B. Humphrey
President, CPDA

September 2, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative cited as the "Sexual Predator Punishment and Control Act: Jessica's Law" (File No. SA2005RF0092).

PROPOSAL

The proposed initiative amends current law related to sex offenses. The measure would (1) increase penalties for some sex offenses, (2) require certain sex offenders to wear global positioning system (GPS) devices for life after release from prison, (3) limit where registered sex offenders can live, and (4) make more offenders subject to commitment to state mental hospitals as Sexually Violent Predators (SVPs). Each of these changes is described in more detail below.

Increase Penalties for Sex Offenses. Current law defines sex-related crimes and specifies the penalties for such offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases, it broadens the definition of what constitutes certain sex offenses. In other cases, it increases existing penalties for specified sex offenses. In addition, the measure prohibits probation in lieu of prison for some sex offenses, eliminates the ability of some inmates convicted of certain sex offenses to earn early release credits, and extends parole for specified sex offenders. Each of these changes would result in longer prison and parole terms for the affected offenders. This measure would also impose additional fees (through an increase in an existing court-imposed fee and a new fee for parolees) for offenders who are required to register as sex offenders.

Require GPS Devices. Current law requires certain convicted sex offenders to register with local law enforcement officials. Under this measure, all individuals who

have been convicted and sent to prison for the commission of, or an attempt to commit, a felony sex offense that requires registration would be monitored by GPS devices for life. The Department of Corrections and Rehabilitation (CDCR) would be authorized to collect fees from affected sex offenders for the costs of GPS monitoring.

Limit Where Registered Sex Offenders May Live. Current law bars anyone convicted of specified sex offenses against a child from residing within one-quarter mile of an elementary or middle school while on parole. This measure would broaden this prohibition to bar any person required to register as a sex offender from living within 2,000 feet (about four-tenths of a mile) of any school or park. In addition, the measure authorizes local governments to further limit these residency restrictions.

Changes in SVP Laws. Under current law, an SVP is defined as "a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent behavior." Certain inmates who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and psychiatric evaluation to determine whether they meet the criteria for an SVP. Those offenders who meet the criteria are referred to district attorneys, who determine whether to pursue their commitment by the courts in a civil proceeding as an SVP. Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, an offender may be in prison. However, if his prison sentence has been completed, he may be housed either in a county jail or in a state mental hospital. Offenders designated as an SVP by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

This measure would generally make more sex offenders eligible for an SVP commitment by (1) reducing from two to one the number of prior victims of sexually violent crimes needed to qualify as an offender for an SVP commitment, and (2) making additional prior offenses, such as certain crimes committed by a person while a juvenile, "countable" for purposes of an SVP commitment. Also, SVPs would receive an indeterminate commitment to a state mental hospital from a court rather than the renewable two-year commitment allowed for under existing law. In addition, the measure would change the standard that courts would consider for release of SVPs from a state mental hospital.

FISCAL EFFECT

This measure would have a number of significant fiscal effects on both state and county governments. The major fiscal effects are discussed below.

Fiscal Impact on the State

Net Prison Operating and Capital Outlay Costs. Several of this measure's provisions would likely result in a significant, though unknown, increase in prison operating costs due to increased prison population. In particular, the measure's provisions that increase sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a greater prison population over time. In addition, the provisions requiring some parolees and other registered sex offenders to wear GPS devices could result in an increase in the number of offenders who are identified as (1) violating the conditions of their parole and therefore are returned to prison or (2) committing new crimes. An increase in parolee revocations would also result in an increase in revocation hearing workload. In addition, it is possible that in the longer term this measure could result in unknown, but potentially significant, additional capital outlay costs to accommodate the increase in the inmate population.

There could be some unknown, but potentially significant, offsetting savings in prison and revocation hearing costs to the extent that the GPS requirement reduces the likelihood that sex offenders commit new crimes or violations of parole that return offenders to prison.

As noted above, this measure would likely result in significant costs and some unknown, but potentially significant, savings. These savings are not likely to offset the costs.

Net Parole and Monitoring Costs. The initiative's provisions requiring GPS devices for some registered sex offenders for life—including additional parole staff to track offenders in the community—would likely result in an increase in state parole operating costs in the several tens of millions of dollars annually within a few years. These costs would grow to about $100 million annually after ten years, with costs continuing to increase significantly in subsequent years. Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear the degree to which local governments would bear some of these long-term costs.

Also, the state may incur initial unknown costs to relocate parolees who currently would be in violation of the 2,000 foot restriction around schools and parks. The initiative could also result in significant, though unknown, parole supervision costs for increases in the parole population. These costs would occur to the extent that the potential deterrent effect of GPS monitoring keeps more parolees under parole supervision instead of being returned to prison for new crimes or violations of parole.

Taking both the costs and savings identified above into consideration, we believe that the SVP-related provisions of this measure could result in a net increase in state operating costs of at least $100 million after a few years. It is also likely to result in net capital outlay costs within a few years in the low hundreds of millions of dollars.

Fiscal Impact on Court Operations. An increase in the number of DMH referrals to county district attorneys would result in increased court costs related to the commitment process. However, the measure would potentially result in court savings by eliminating recommitment hearings, since it allows for indeterminate commitments instead of the two-year recommitment process currently in place.

In addition, various provisions of this measure could increase or decrease court workload to the extent that they affect the number of sex offenders who are tried for new crimes. For example, the GPS requirements could result in more offenders being caught and tried for new offenses, thereby increasing court workload. On the other hand, to the extent that sex offenders are serving longer terms in prison and mental hospitals because of this measure, those individuals would not be in the community able to commit and be prosecuted for new crimes. Given the potential for these factors to offset each other, the net fiscal impact of this measure on state court costs is indeterminable.

Fiscal Impact on Local Governments

This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.

Changes to Criminal Penalties and Supervision. The provisions of this measure that increase criminal penalties and require GPS monitoring of sex offenders could affect county jail, probation, district attorney, and public defender costs. Several provisions of this measure require stricter penalties for certain sex offenses, making it more likely that some offenders will be housed in state prisons and mental hospitals who would otherwise be in local jails or on probation under current law. To the extent that this occurs, local governments would likely experience some criminal justice system savings. The provisions regarding GPS tracking could affect local government expenditures due primarily to more offenders being prosecuted for crimes, thereby increasing costs.

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result

from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs.

SUMMARY OF FISCAL EFFECT

This measure would have the following net fiscal effects:

- Unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.
- Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.
- Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance

On the other hand, the measure could result in reductions in the parole population—and, therefore, parole supervision savings—to the extent that (1) the longer prison sentences and changes to the SVP law result in fewer releases of sex offenders to parole, and (2) the GPS requirement results in more parolees being returned to prison for new crimes or violations of parole.

The measure would result in additional fee revenues that would partially offset the monitoring costs. Specifically, the measure's provisions that (1) allow the department to collect fees from affected parolees and (2) require some of the increased court penalty fees to go to the department could provide as much as a few million dollars annually, depending in large part on offenders' ability to pay these costs.

The net fiscal impact on parole operations is likely to be increased costs of several tens of millions of dollars annually for the first few years, probably reaching at least $100 million in about ten years, and increasing significantly thereafter.

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

This measure would result in increased commitments of SVPs to state mental hospitals. Also, some additional offenders who had completed their prison sentences would be held in state mental hospitals while the courts considered whether they should receive an SVP commitment. The resulting net costs to the state for operating these additional state mental hospital beds could eventually reach $100 million annually after a few years and would continue to grow significantly thereafter. In addition, this measure could result in one-time net capital outlay costs amounting to the low hundreds of millions of dollars for the construction of additional state hospital beds for SVPs.

All of these operating and capital outlay costs would be partly offset in the long term, to the extent that the longer prison sentences required by this measure for certain crimes eventually resulted in fewer SVP referrals and commitments to state mental hospitals. These offsetting savings are unknown but are likely to be significant in the long term. In addition, the state is likely to save on the costs of evaluations and court testimony related to recommitments because of the provisions in this measure that would impose indeterminate commitments for persons found to be SVPs. These state savings would probably be more than $1 million annually.