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**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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Commission on  
State Mandates

May 30, 2013

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

Dear Ms. Halsey:

**LOS ANGELES COUNTY'S REBUTTAL COMMENTS ON  
SEXUALLY VIOLENT PREDATORS ("SVP) REDETERMINATION**

The County of Los Angeles respectfully submits its rebuttal comments on the Commission on State Mandates' (CSM) draft staff analysis of the SVP Program.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or [hyaghobyan@auditor.lacounty.gov](mailto:hyaghobyan@auditor.lacounty.gov).

Very truly yours,

Wendy L. Watanabe  
Auditor-Controller

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H:\SB90\CSM's Extensions\SVP 5-30-13.doc

Attachment

**LOS ANGELES COUNTY'S REBUTTAL COMMENTS ON  
COMMISSION ON STATE MANDATES' ("CSM") DRAFT STAFF ANALYSIS  
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles, ("the County") disagrees with the CSM's draft analysis and Statement of Decision on the subject program for concluding that the Department of Finance ("DOF") has made "an adequate showing that the State's liability has been modified pursuant to a subsequent change in law, as defined in section 17570" (CSM Draft Staff Analysis page 3).

Our disagreements are based on: (1) CSM's conclusion that the reason DOF waited six and half years after the passage of Proposition 83 in 2006 ("Prop. 83") to request a new test claim in January 2013 due to the lack of a mechanism and process in place until the enactment of section 17570 in 2010; and (2) Prop. 83's requirement should not apply to pre Prop. 83 SVP offenders.

**There was a mechanism and process in place after the passage of Prop. 83 because CSM adopted new SVP Parameters and Guidelines ("P's&G's") in October 2009.**

On September 30, 2008, in enacting AB 1389, Section 75, the legislature directed the CSM to review and determine whether a reimbursable State mandate still existed in light of the passage of Prop. 83:

Notwithstanding any other provision of law, the Commission on State Mandates, upon final resolution of any pending litigation challenging the constitutionality of subdivision (f) of Section 17556 of the Government Code, shall reconsider its test claim statement of decision in CSM-4509 on the Sexually Violent Predator Program to determine whether Chapters 762 and 763 of the Statutes of 1995 and Chapter 4 of the Statutes of 1996 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of ballot measures approved by the state's voters, federal and state statutes enacted, and federal and state court decisions rendered since these statutes were enacted. The commission shall, if necessary, issue a statewide cost estimate and revise its parameters and guidelines in CSM-4509 to be consistent with this reconsideration and shall, if practicable, include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4509 shall be deemed effective on July 1, 2009.

CSM did not institute a new test claim as a result of Prop. 83. Instead CSM considered and adopted new SVP's P's&G's (05-PGA-43), to define additional reimbursable activities and refined claim preparation and submissions of local agencies in providing SVP reimbursable activities.

In addition, in response to California School Board's Association, 171 Cal.App.4<sup>th</sup> 1183 decision, the current procedure for challenging previously approved CSM's decision was enacted in SB 856 effective October 19, 2010. There was a procedure in place for DOF to request a new test claim. DOF waited until January 2013, to request a new test claim, nearly six and half years after the passage of Prop. 83.

**Prop. 83 made two changes to the then existing SVP law, the new requirements should not be applied to the pre Prop. 83 offenders**

The only two significant changes Prop. 83 made to SVP law were (1) standards for the release of SVPs from state mental hospitals, and (2) the number of prior victims of SVP offenses necessary to qualify an offender for an SVP commitment. Therefore, the new requirements of the SVP should not be applied to the pre Prop. 83 offenders until they leave the program.

Retroactive application of the Prop. 83 SVP law (a violation of Ex Post Facto Law) would be unconstitutional. In adopting a new P's&G's for Chapter 641, Statutes of 1995, CSM stated:

Chapter 641/95, eliminated diversion as a domestic violence sentencing for those arrested on or after January 1, 1996, under prior law, (Chapter 221/93, and Chapter 1158/80) was not terminated by Chapter 641/95 and continues until the period of diversion has been completed. Such completion and resultant closeout costs, for the period January 1, 1996 through June 30, 1997, may be claimed as provided... CSM-4447A, page 1.

To eliminate the right of the pre Prop. 83 SVP offenders from the pre Prop. 83 applicable laws would be nullifying the sentencing judges' orders. Our interpretation of statutes declares all laws are to commence in the future and operate prospectively. Therefore, reimbursement should continue on all pre Prop. 83 offenders until jurisdiction is terminated.

Based on the foregoing analysis, the County respectfully requests the CSM to deny the DOF's request for a redetermination of SVP reimbursable program and adopting a new test claim.