

Law Offices of the Public Defender

Administration

Phyllis K. Morris
Public Defender

*Promoting justice through effective litigation
that protects constitutional rights.*



G. Christopher Gardner
Assistant Public Defender

September 5, 2013

RECIEVED
September 5, 2013
COMMISSION ON
STATE MANDATES

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

RE: 12-MR-01, SVP Mandate Redetermination Request (CSM-4509), Comments to Proposed Decision

Dear Ms. Halsey:

In response to the Commission's Draft Staff Analysis and Proposed Statement of Decision hearing scheduled on September 27, 2013, the San Bernardino County Public Defender submits the following comments in opposition to the Department of Finance's request to adopt a new test claim and end state reimbursements under the Sexually Violent Predator's Act (SVPA).

This office opposes the Department of Finance's assertions that state reimbursements should end because the Welfare and Institutions Code sections pertaining to the SVPA are "expressly included" in Proposition 83 or are "necessary to implement" Proposition 83 as provided for in Government Code §17556(f). In 1995, the Legislature created and the Governor signed into law the SVPA (Welfare and Institutions Code §6600, et seq.), which was subsequently amended by SB 1128 in 2006. Since Proposition 83 mirrored many of the same provisions as cited in SB 1128 and effectuated changes that were procedural rather than substantive, its enactment did not constitute a "subsequent change in the law" as required under Government Code §17570. Nor did Proposition 83 change any of the state-mandated activities the legislative scheme had previously imposed upon counties' law and justice agencies. The state should not use the mere recitation of an existing law that gives contextual meaning to proposed procedural amendments as a shield to negate its responsibility to reimburse local governments for activities that support a legislatively created state-mandated program. To do so results in a legal application that is vague and impermissibly overbroad (See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183).

The fiscal impact to our county is significant. The Public Defender currently provides representation on 55 outstanding SVP petitions filed against individuals. A competent defense requires a significant investment of time from attorneys and investigators and the retention of qualified experts and other professionals. The state's reimbursement for services rendered under SVPA for FY 2010-2011 by the Public Defender was \$846,339.

I respectfully urge the Commission on State Mandates to deny the Department of Finance's test claim for the redetermination of costs under SVPA.

Sincerely,

A handwritten signature in blue ink that reads "Phyllis K. Morris".

Phyllis K. Morris
Public Defender

PKM/roz