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COMMISSION ON
STATE MANDATES

SEN. GEORGE RUNNER (RET.)

MEMBER
STATE BOARD OF EQUALIZATION
CALIFORNIA'S TAX BOARD

LATE FILING

September 26, 2013

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: MANDATE REDETERMINATION/SEXUALLY VIOLENT PREDATORS (CSM-4509) 12-MR-01

Dear Commissioners,

As a former State Senator who voted for SB 1128 (Senator Alquist's comprehensive Sex Offender Law of 2006) and co-authored Jessica's Law (Proposition 83), I hope that my observations may prove to be of some value to the Commission.

Jessica's Law was enacted by more than 70% of California voters on November 7, 2006. The law is most associated with creation of a publicly accessible registry of convicted sex offenders. Many of the provisions of Jessica's Law were designed to protect children from known child molesters.

Included in Jessica's Law were some of the provisions of California's Sexually Violent Predator Law (SVP) first passed by the Legislature in 1995 and amended and re-enacted as part of SB 1128 in 2006. The SVP Law authorizes the state to civilly confine and treat a convicted sex offender who has been determined (after trial) to suffer a diagnosable mental disorder that predisposes him or her to reoffend.

The primary SVP issues addressed in Jessica's Law related to the number of convictions a sex offender must have before being evaluated by the state and the duration of civil commitments. Neither the clinical evaluation of offenders nor the duration of the commitment to a state mental facility is part of the process that the commission has previously deemed to be a state mandate on local government. In any event both provisions were amended by the Legislature with the passage of SB 1128 (enacted with urgency) prior to the voter approval of Jessica's Law.

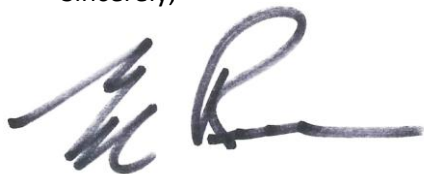
As has been addressed by others, Jessica's Law (Proposition 83) did not impose a new mandate on local government or materially change an existing state mandate. Indeed, if Proposition 83 had not passed the responsibility of local government in the implementation of the Sexually Violent Predator Law would remain the same. It is nonetheless the current position of the Department of Finance that Proposition 83, by simply republishing some of the provisions of the SVP Law, morphed a reimbursable state mandate into an unreimbursed burden to be borne by local government. This position is unhappily contrary to Finance's pre-election analysis of Proposition 83, which indicated that "The portion of costs related to changes in the Sexually Violent Predators program would be reimbursed by the state."

The conflicting dispositions of the Department of Finance and the array of opinions expressed in the voluminous file compiled by the Commission make at least one thing clear: the impact of Proposition 83 can be interpreted in more than one manner. Generally, when at all possible the language of an initiative is construed to give effect to the will of the voters. Unfortunately, the interpretation favored by the Department of Finance frustrates the intent of the voters who supported not one but two ballot initiatives. Although voter intent is not always clear, the Finance argument against reimbursement can most charitably be characterized as a loophole designed to avert the clear intent of the voters who amended the California Constitution to require funding of state mandates (Proposition 4, 1979). Even more perverse is Finance's response to the voters who supported Proposition 83. They are being told that, despite their clear intent that the laws penalizing sex offenders and protecting at risk children be strengthened, their votes enacting Proposition 83 will be used to eviscerate funding for the Sexually Violent Predator Program.

The Sexually Violent Predator law and those it protects should not fall victim to the newly created arguments of the Department of Finance. Make no mistake the capacity of county District Attorneys are already severely strained. In the absence of reimbursement many counties will be unable to pursue appropriate civil commitment cases. Often the SVP law has proven to be the only mechanism by which serial rapists and child molesters can be kept off our streets. The California Supreme Court has described the task of interpreting ballot measures as one in which: "our primary purpose is to ascertain and effectuate the intent of the voters who passed the initiative measure." Here the commission is being urged, by the Department of Finance, to use the votes of those who enacted Proposition 83 against the voters themselves.

I am fearful that the issue before the Commission has devolved into a dollar dispute based upon technical form not public safety. Dollars are fungible; children are not. The SVP Program saves lives. I urge the Commission to embrace the notion that the public's right to the initiative must be jealously guarded by fully considering the intent of the voters who enacted Proposition 83 and the children they seek to protect.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Runner", with a stylized flourish at the end.

GEORGE RUNNER
Second District