Hearing Date: March 27, 2020
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ITEM 4

RECONSIDERATION OF THE REQUEST FOR MANDATE REDETERMINATION ON REMAND

PROPOSED DENIAL OF THE REQUEST FOR A NEW TEST CLAIM DECISION

Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196; Judgment and Writ of Mandate Issued by Superior Court for the County of San Diego, Case No. 37-2014-00005050-CU-WM-CTL

Notice of Entry of Judgment and Writ of Mandate Remanding the Matter for Reconsideration Served June 5, 2019.

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)

Sexually Violent Predators (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election, November 7, 2006

12-MR-01-R

Department of Finance, Requester

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Received
January 15, 2013
Commission on
State Mandates

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

EXHIBIT A

January 15, 2013

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

Dear Ms. Halsey:

Please find attached the Department of Finance's "Request to Adopt a New Test Claim Decision" on the Sexually Violent Predators mandate. As this request is linked to anticipated General Fund savings, we respectfully request the Commission on State Mandates expedite the review and hearing process of this request.

Sincerely,

Tom Dyer
Assistant Program Budget Manager

Enclosure

COMMISSION ON STATE MANDATES
FORM TO REQUEST TO ADOPT A NEW TEST CLAIM DECISION
(Adopted November 9, 2010)

GENERAL INSTRUCTIONS

- ○ Type All Responses
- ○ Complete sections 1 through 8, as indicated. Failure to complete any of these sections will result in this request to adopt a new test claim decision being returned as incomplete.
- ○ Please submit by either of the following methods:

1. By hard copy. The requester shall file, consistent with the Commission's regulations (CCR, tit. 2, § 1181.2), one original signed hard copy, and seven (7) copies, which shall include a table of contents, be unbound, double-sided, and shall not include tabs to:

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

2. E-filing. The requester shall electronically file the request and any accompanying documents in pdf format to the e-filing system on the Commission's website, consistent with the Commission's regulations (CCR, tit.2, §1181.2). The requester is responsible for maintaining the paper request with original signature(s) for the duration of the redetermination process, including any period of appeal. No additional copies are required when e-filing the request.

Within ten (10) days of receipt of a request to adopt a new test claim decision, Commission staff will notify the requester if the request is complete or incomplete. Requests to adopt a new test claim decision will be considered incomplete if any of the required sections are not included or are illegible. If a completed request is not received within thirty (30) calendar days from the date the incomplete request was returned, the executive director may disallow the original request filing date. A new request may be accepted on the same subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section 6, subdivision (a) of the California Constitution.

You may download this form from our website at csm.ca.gov.
If you have questions, please contact us:

Website:	www.csm.ca.gov
Telephone:	(916) 323-3562
Fax:	(916) 445-0278
E-Mail:	csminfo@csm.ca.gov

1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION

Sexually Violent Predators (CSM - 4509)

For CSM Use Only	
Filing Date:	Received January 15, 2013 Commission on State Mandates
NTCD#	12-4509-MR-01

2. REQUESTER INFORMATION

Name of Local Agency, School District, Statewide Assocation of Local Agencies or School Districts, or State Agency
California Department of Finance

Requester Contact
Randall Ward

Title
Principal Program Budget Analyst

Organization
Department of Finance

Street Address
915 L Street, Room 1190

City, State, Zip Code
Sacramento, CA 95814

Telephone Number
(916) 445-3274

Fax Number
(916) 449-5252 E-Mail Address: randy.ward@dof.ca.gov

E-Mail Address

3. REPRESENTATIVE INFORMATION

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if desginating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

4. IDENTIFYING INFORMATION

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability.

On June 25, 1998, the Commission on State Mandates adopted the Statement of Decision for the Sexually Violent Predators mandate (CSM - 4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608. On September 24, 1998, the Commission on State Mandates adopted Parameters and Guidelines that were subsequently amended on October 30, 2009. These Parameters and Guidelines provide reimbursable activity detail.

On November 7, 2006, California voters approved Proposition 83, also known as Jessica's Law, which substantively amended and reenacted various sections of the Welfare and Institutions Code that had served as a basis for the Commission's Statement of Decision.

Based on the passage of Proposition 83, the state's obligation to provide reimbursement for this mandate has ceased pursuant to Government Code sections 17570 and 17556, subdivision (f).

Sections 5, 6 and 7 are attached as follows:

5. Detailed Analysis: Pages 1 to 5.
6. Declarations: Pages 6 to 7.
7. Documentation: Pages A to C

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6, subdivision (a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

A. Identification of all of the following if relevant:
   1. Dedicated state funds appropriated for the program.
   2. Dedicated federal funds appropriated for the program.
   3. Fee authority to offset the costs of the program.
   4. Federal law.
   5. Court decisions.
   6. State or local ballot measures and corresponding date of election.

6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.

B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.

C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.

D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.

E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

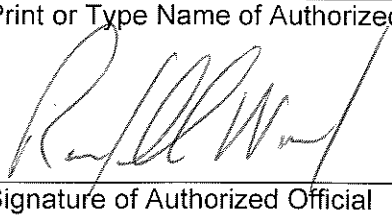
8. CERTIFICATION

*Read, sign, and date this section and insert at the end of the request for a new test claim decision.**

This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.

Randall Ward
Print or Type Name of Authorized Official

Principal Program Budget Analyst
Print or Type Title


Signature of Authorized Official

1-15-13
Date

*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
Section 5: Detailed Analysis

On June 25, 1998, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Sexually Violent Predators (SVP) mandate (CSM-4509) and approved reimbursement for the following activities:

- **Activity 1 -** 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, subd. (i)).

- **Activity 2 -** 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, subd. (i)).

- **Activity 3 -** Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j)*). * SOD and P&Gs reference to subdivision (j) is likely a typographical error and should be (i) because subdivision (j) lacks subject matter relevancy to this reimbursable activity.

- **Activity 4 -** Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602).

- **Activity 5 -** Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604).

- **Activity 6 -** 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, subds. (b) through (d), and 6608, subds. (a) through (d)).

- **Activity 7 -** 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, subd. (d)).

- **Activity 8 -** 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).

In 1998, the Commission on State Mandates adopted the Statement of Decision for the Sexually Violent Predators (SVP) mandate (CSM - 4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608.

On November 7, 2006, California voters approved Proposition 83 (Prop 83), also known as Jessica's Law, which substantively amended and reenacted sections of the Welfare and Institutions Code relative to the SVP mandate. Government Code section 17570 sets forth a process for adopting a new test claim decision based on a subsequent change in law. Section 17570 defines a subsequent change in law as a change in law that requires a finding that an incurred cost is a cost mandated by the state (Government Code section 17514) or is not a cost mandated by the state (Government Code section 17556).

The enactment of Prop 83 constituted a "subsequent change in law", as defined in Government Code section 17570, because all of the Welfare and Institutions Code sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83. Pursuant to Government Code section 17556, subdivision (f), the cost incurred by a local agency to comply with the SVP mandate is no longer a cost mandated by the state. Therefore, the state's obligation to reimburse affected local agencies has ceased.

The entire text of the sections amended by voters in Prop 83, including the portions not amended, was reenacted by the voters pursuant to Article IV, section 9, of the California Constitution. Because voters approved all of the text in Prop 83, including subdivisions not amended, the sections that formed the SVP mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision (f). These Welfare and Institutions Code sections of the mandate were expressly included in the ballot measure.

The remainder of the mandate's Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure. These, too, are no longer reimbursable under Government Code section 17556, subdivision (f). In summary, all activities found to be reimbursable by the Commission in the SVP mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision (f) as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.

The following activities are expressly included in and reenacted by Prop 83 and are no longer reimbursable:

Activity 1 - 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, subd. (i)).

- The district attorney or county counsel is designated by the county board of supervisors to assume responsibility for the proceedings. Although subdivision (i) was not amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate.

Activity 2 - 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, subd. (i)).

- The district attorney or county counsel is designated by the county board of supervisors to assume responsibility for the initial review of reports and records. Although subdivision (i) was not amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate.

Activity 3 - Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j)).

- Although neither subdivision (i) nor (j) was amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate. **SOD and P&Gs reference to subdivision (j) is likely a typographical error and should be (i) because subdivision (j) lacks subject matter relevancy to this reimbursable activity.

Activity 6 - 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, subds. (b) through (d), and Welf. & Inst. Code, § 6608, subds. (a) through (d)).

- Subsequent to a person being committed for an indeterminate term (Welfare and Institutions Code section 6604), Prop 83 requires hearings to determine whether or not the person is still considered to be an SVP. Welfare and Institutions Code section 6605, as amended and reenacted by Prop 83, in subdivision (d) restates the rights of the committed person during subsequent hearings to be the same constitutional protections provided to them at the initial commitment proceeding. Additionally, Prop 83 amends provisions in Welfare and Institutions Code section 6608 that set forth a process to allow the committed person to petition for conditional release or unconditional discharge. Because the aforementioned Welfare and Institutions Code sections were amended and reenacted by Prop 83, these activities are no longer reimbursable under the SVP mandate.

The following activities are necessary to implement Prop 83 and are no longer reimbursable:

Activity 4 - Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602).

- Welfare and Institutions Code section 6604 has been amended by Prop 83 to require an SVP be determined, beyond a reasonable doubt, to still be a sexually violent predator and be committed to an indeterminate term rather than the two-year term set forth in Welfare and Institutions Code section 6602. Because Prop 83 specifies the court or jury determination process regarding sentencing in Welfare and Institutions Code section 6604, it is clear the requirement to hold a probable cause hearing would have been a preceding event. In summary, the probable cause hearing held to determine if

the individual is an SVP, as provided for in Welfare and Institutions Code section 6602, is necessary to implement Prop 83 and the subsequent hearing provisions in Welfare and Institutions Code section 6604. Further, the substance of section 6602 is referenced in Welfare and Institutions Code section 6605, subdivision (d) that was reenacted by Prop 83.

Activity 5 - Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604).

- Welfare and Institutions Code section 6603 establishes the criteria to meet obligations contained in sections 6604 and 6605, subdivision (d). Welfare and Institutions Code section 6603 recognizes the constitutional rights of the SVP and thus is an inherently necessary component of implementing Prop 83. Welfare and Institutions Code section 6604, through Prop 83, restates the person committed shall be entitled to the same constitutional protections afforded at the initial commitment proceeding. Moreover, Prop 83 reenacted provisions in Welfare and Institutions Code section 6601, subdivisions (h) through (l) that provide for specified state and local procedures regarding the original commitment process. The processes identified in Welfare and Institutions Code section 6601, subdivisions (h) through (l) require either the district attorney or county counsel to assume the responsibility for proceedings under the entire article. Therefore, it is necessary to provide an SVP, as with any defendant, specified constitutional protections. Because SVP defense-related processes are integral and inherently related to the function and intent of Prop 83, they are necessary statutory components of its implementation and are no longer reimbursable under the SVP mandate.
- The Commission attributed portions of this mandated activity to section 6604, and that section is expressly included in Prop 83.

Activity 7 - 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, subd. (d)).

- Welfare and Institutions Code section 6603 establishes the criteria to meet obligations contained in Prop 83 as amended and reenacted under Welfare and Institutions Code sections 6604 and 6605, subdivision (d). Welfare and Institutions Code section 6603 recognizes the constitutional rights of the SVP and thus is an inherently necessary component of Prop 83. Therefore, it is necessary to provide an SVP, as with any defendant, specified constitutional protections. Because SVP defense-related processes are integral and inherently related to the function and intent of Prop 83, they are necessary statutory components of its implementation and are no longer reimbursable under the SVP mandate.
- The Commission attributed portions of this mandated activity to section 6605, and that section is expressly included in Prop 83.

- Welfare and Institutions Code section 6604 includes specified jury and court procedures that occur subsequent to the probable cause process as set forth in Welfare and Institutions Code section 6602. Prop 83 reenacted subdivision (d) of Section 6605 that establishes the SVP is entitled to the same constitutional rights provided them at the original commitment proceeding and thus section 6602 is an integral component necessary for Prop 83's implementation. The initial probable cause hearing, as defined in section 6602, is necessary to determine if the person is an SVP. Therefore, subsequent hearings, as defined in Welfare and Institutions Code section 6601, subdivisions (h) through (l), and Welfare and Institutions Code section 6604, could only occur following the initial commitment procedures set forth in Welfare and Institutions Code section 6602. During this time, housing and transportation must be provided pursuant to section 6602. Therefore, Welfare and Institutions Code section 6602 is necessary to implement section 6604, which is part of the ballot measure. Activities, including transportation and housing, associated with the initial SVP determination process are necessary statutory components of Prop 83 implementation and are no longer reimbursable under the SVP mandate.

The preceding activities previously determined to be reimbursable in the Statement of Decision for the SVP mandate (CSM-4509) cease to be a reimbursable mandate pursuant to the amended, reenacted or referenced code sections expressly included in, or necessary to implement Prop 83, pursuant to Government Code section 17570, and Government Code section 17556, subdivision (f).

Enclosure

According to Schedule A-1 of the Controller's November 14, 2012, "State Mandated Program Cost Report As of September 30, 2012" (See Attachment C), the State provided $20,754,301 General Fund in 2012-13 to reimburse eligible claimants for the cost of implementing the SVP mandate. Based on that data, the Department of Finance included an estimate of $21,792,000 General Fund in the 2013-14 Governor's Budget for the cost of the mandate. As costs are paid two years in arrears, the estimate is to provide reimbursement for costs incurred in the 2011-12 fiscal year.

Based on the forgoing analysis, which provides substantiation that the eight previously reimbursable activities in the SVP Statement of Decision (CSM-4509) cease to be eligible for reimbursement, the State's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero. Pursuant to Government Code section 17570, subdivision (f) and the pre-June 30, 2013 filing date of this request, the effective date of eliminating reimbursement for the SVP mandate will be July 1, 2011.

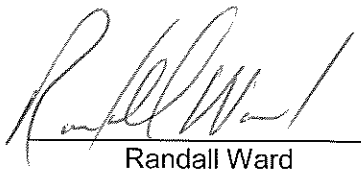
Enclosure

DECLARATION OF RANDALL WARD
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

1-15-13
at Sacramento, CA


Randall Ward

Attachments

Text of Proposed Laws: Proposition 83 ..... A
Welfare and Institutions Code sections 6601 through 6608 ..... B
State Controller's November 14, 2012 "State Mandated Program Cost Report (AB 3000)" C

include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 83

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as "The Sexual Predator Punishment and Control Act: Jessica's Law."

SEC. 2. FINDINGS AND DECLARATIONS

The People find and declare each of the following:

(a) The State of California currently places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the People in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is an useful tool for monitoring sexual predators and other sex offenders and is a cost effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(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.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b)(1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration in~~ *any* violation of Section *264.1, 288, or* 289, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect

Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. ~~Every~~ *(a) Except as provided in subdivision (b), any* person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 ~~is punishable~~ *shall be punished* by imprisonment in the state prison for two, four, or six years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~10~~ *seven* or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Rape or sexual penetration, in concert, in* violation of Section 264.1.

(3) Sodomy, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(4) Oral copulation, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 288a~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

SEC. 6. Section 288.3 is added to the Penal Code, to read:

288.3. (a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

SEC. 7. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for ~~violation~~ *commission* of the underlying offense, be punished by a fine of ~~two~~ *three* hundred dollars ~~($200)~~ *($300)* upon the first conviction or a fine of ~~three~~ *five* hundred dollars ~~($300)~~ *($500)* upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out* of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections or the Department of the Youth Authority may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (a) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority. All moneys collected by the Department of Corrections or the Department of the Youth Authority under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 8. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a ~~public offense~~ *felony* and shall be punished by imprisonment in the *state prison, or a* county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) ~~If a~~ *Every* person *who commits a violation of subdivision (a), and who* has been previously convicted of a violation of this section, ~~or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she~~ *an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the above-mentioned offenses,* is guilty of a felony and shall be punished by imprisonment *in the state prison* for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 286.*

(5) Oral copulation ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 288a.*

(6) Lewd ~~acts on a child under the age of 14 years~~ *or lascivious act* as defined in *subdivision (a) or (b) of* Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, *12022.8,* or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in *subdivision (a) of Section 12022.3, or* Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense~~ *Sexual penetration as* defined in subdivision (a) *or (j)* of Section 289 ~~where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit ~~mayhem, rape, sodomy, or oral copulation~~ *a specified felony*, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 10. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is ~~found guilty~~ *convicted* of violating Section 288 *or 288.5* shall receive a five-year enhancement for a prior conviction of an offense ~~listed~~ *specified* in subdivision (b)~~, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction~~.

(b) Section 261, *262,* 264.1, *269,* 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses ~~set forth~~ *specified* in this subdivision.

~~(c) Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

~~(d)~~ A violation of Section 288 *or 288.5* by a person who has been

previously convicted two or more times of an offense ~~listed~~ *specified* in subdivision ~~(c) is punishable as a felony~~ *(b) shall be punished* by imprisonment in the state prison for 15 years to life. ~~However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.~~

SEC. 11. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is ~~found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *convicted of an offense specified in subdivision (e) and* who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions ~~provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.~~

(b) Any person *who is* convicted of an offense specified in subdivision ~~(a)~~ *(e) and* who has served two or more prior prison terms as defined in Section 667.5 for any ~~offense specified in subdivision (a),~~ *of those offenses* shall receive a 10-year enhancement for each of those prior terms ~~provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.~~

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction~~ *an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).* If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be ~~served~~ *imposed* for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *an offense specified in subdivision (e)* if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) *This section shall apply to the following offenses:*

(1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.

(5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.

(8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.

(9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.

(10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837. If the court orders a fine to be imposed pursuant to *this* subdivision ~~(a) or (b)~~, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 12. Section 667.61 of the Penal Code is amended to read:

667.61. (a) ~~A~~ *Any* person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for *25 years to* life ~~and shall not be eligible for release on parole for 25 years~~

~~except as provided in subdivision (j).~~

(b) Except as provided in subdivision (a), ~~a~~ *any* person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for *15 years to* life ~~and shall not be eligible for release on parole for 15 years except as provided in subdivision (j)~~.

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) ~~A~~ *Lewd or lascivious act, in* violation of subdivision (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(6) ~~Sodomy or oral copulation~~ *Sodomy,* in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286 ~~or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(7) ~~A~~ *Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.*

(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288 ~~, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066~~.

(9) Continuous sexual abuse of a child, in violation of Section 288.5.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary *of the first degree*, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary ~~, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public,~~ in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or *a* firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim ~~by force, violence, or fear~~ in the commission of the present offense in violation of Section 12022.75.

(8) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) ~~which~~ *that* are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b), *whichever is greater,* rather than being used to impose the punishment authorized under any other *provision of* law, unless another *provision of* law provides for a greater penalty *or the punishment under another provision of law can be imposed in addition to the punishment provided by this section.* However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other *provision of* law.

(g) Notwithstanding *Section 1385 or* any other *provision of* law, the court shall not strike any *allegation, admission, or finding of any* of the circumstances specified in subdivision (d) or (e) *for any person who is subject to punishment under this section.*

~~(g) The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section ~~for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (e)~~.

(i) For ~~the~~ *any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

(j) The penalties provided in this section ~~to~~ *shall* apply ~~,~~ *only if* the existence of any ~~fact required under~~ *circumstance specified in* subdivision (d) or (e) ~~shall be~~ *is* alleged in the accusatory pleading *pursuant to this section,* and *is* either admitted by the defendant in open court or found to be true by the trier of fact.

~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 13. Section 667.71 of the Penal Code amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses ~~listed~~ *specified* in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender ~~is punishable~~ *shall be punished* by imprisonment in the state prison for 25 years to life. ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25~~

~~years in the state prison.~~

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) ~~A~~ *Lewd or lascivious act, in* violation of subdivision (a) or (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) *or (j)* of Section 289.

(6) ~~A~~ *Continuous sexual abuse of a child, in* violation of Section 288.5.

(7) ~~A~~ *Sodomy, in* violation of subdivision (c) *or (d)* of Section 286 ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(8) ~~A violation of subdivision (d) of Section 286.~~

~~(9) A~~ *Oral copulation, in* violation of subdivision (c) or (d) of Section 288a ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

~~(10) A~~ *(9) Kidnapping, in* violation of subdivision (b) of Section 207.

~~(11) A~~ *(10) Kidnapping, in* violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

~~(12)~~ *(11)* Kidnapping, in violation of *subdivision (b) of* Section 209 with the intent to commit ~~rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289~~ *a specified sexual offense.*

~~(13) A~~ *(12) Aggravated sexual assault of a child, in* violation of Section 269.

~~(14)~~ *(13)* An offense committed in another jurisdiction that ~~has~~ *includes* all *of* the elements of an offense specified in ~~paragraphs (1) to (13), inclusive, of~~ this subdivision.

(d) *Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.*

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the ~~information~~ *accusatory pleading*, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury~~ *trier of fact.*

SEC. 14. Section 1203.06 of the Penal Code is amended to read:

1203.06. ~~Notwithstanding Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, *nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for,* any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207, *209, or 209.5.*

(D) ~~Kidnapping in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(E) Burglary of the first degree, as defined in Section 460.

(F) ~~Except as provided in Section 1203.065, rape~~ *Rape,* in violation of ~~paragraph (2) of subdivision (a) of~~ Section 261, *262, or 264.1.*

(G) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) Carjacking, in violation of Section 215.

(J) ~~Any person convicted of aggravated~~ *Aggravated* mayhem, in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(M) A felony violation of Section 136.1 or 137.

(N) Sodomy, in violation of Section 286.

(O) Oral copulation, in violation of Section 288a.

(P) Sexual penetration, in violation of Section 289 or 264.1.

(Q) Aggravated sexual assault of a child, in violation of Section 269.

(2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of~~ paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b)(1) The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury~~ *trier of fact.*

(2) ~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3)~~ As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, ~~or~~ to intentionally strike or hit a human being with it, *or to use it in any manner that qualifies under Section 12022.5.*

~~(4)~~ *(3)* As used in subdivision (a), "armed with a firearm" means to knowingly carry *or have available for use* a firearm as a means of offense or defense.

SEC. 15. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other *provision of* law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) *or (6)* of subdivision (a) of Section 261, Section 264.1, 266h, 266i, ~~or~~ 266j, *or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a,* subdivision (a) of Section 289, ~~of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,~~ or ~~of violating~~ subdivision (c) of Section 311.4.

(b)*(1)* Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of~~ *violating* paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, *subdivision (g) of Section 289,* or Section 220 for assault with intent to commit ~~any of the following: rape, sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289~~ *a specified sexual offense.*

(2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 16. Section 1203.075 of the Penal Code is amended to read:

1203.075. ~~Notwithstanding the provisions of Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, ~~with the intent to inflict the injury,~~ personally inflicts great bodily injury, *as defined in Section 12022.7,* on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207, *209, or 209.5.*

(4) ~~Kidnapping, in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of ~~paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of~~ Section *261,* 262, *or 264.1.*

(7) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) ~~A~~ *Sexual penetration, in* violation of ~~subdivision (a) of~~ Section 289 *or 264.1.*

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, in violation of Section 215.

(13) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(14) Aggravated sexual assault of a child, in violation of Section 269.

(b)~~(1)~~ The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury~~ *trier of fact.*

~~(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.~~

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. (a)(1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) ~~Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is~~ *The parole period of any person found to be* a sexually violent predator shall ~~not toll, discharge, or otherwise affect that person's~~ *be tolled until that person is found to no longer be a sexually violent predator, at which time the* period of parole, *or any remaining portion thereof, shall begin to run.*

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be ~~five~~ *10* years. ~~Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.~~

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~ and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, ~~in no case, except~~ *the period of parole is subject to the following:*

(A) Except as provided in Section 3064, *in no case* may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial ~~parole, and, except~~ *parole.*

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole ~~or from the date of extension of parole pursuant to paragraph (3).~~

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 18. Section 3000.07 is added to the Penal Code, to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any

or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 19. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement ~~or since extension of parole~~, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) *Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.*

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

~~(d)~~ *(e)* The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 20. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a

felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g)~~(1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.~~

Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

~~(h)~~ Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

~~(i)~~ *(h)* The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

~~(j)~~ *(i)* An inmate may be paroled to another state pursuant to any other law.

~~(k)~~ *(j)*(1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 21. Section 3003.5 of the Penal Code is amended to read:

3003.5. *(a)* Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 22. Section 3004 of the Penal Code is amended to read:

3004. *(a)* Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 23. Section 12022.75 of the Penal Code is amended to read:

12022.75. ~~Any~~ *(a) Except as provided in subdivision (b), any* person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b)(1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

SEC. 24. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against ~~two~~ *one* 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 criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an

offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently 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 criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, ~~or~~ fear of immediate and unlawful bodily injury on the victim or another person, *or threatening to retaliate in the future against the victim or any other person,* and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as ~~provided~~ *defined* in subdivision (a): a felony violation of ~~paragraph (2) of subdivision (a) of~~ Section 261, ~~paragraph (1) of subdivision (a) of Section~~ 262, ~~Section~~ 264.1, *269, 286,* ~~subdivision (a) or (b) of Section~~ 288, *288a, 288.5,* or ~~subdivision (a) of Section~~ 289 of the Penal Code, or ~~sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code~~ *any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.*

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, ~~no more than one~~ *a* prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following ~~applies~~ *apply*:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). ~~Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.~~

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 25. Section 6600.1 of the Welfare and Institutions Code is amended to read:

6600.1. ~~(a)~~ If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 ~~and the offending act or acts involved substantial sexual conduct~~, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

~~(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.~~

SEC. 26. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a)(1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and

shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall ~~not~~ toll~~, discharge, or otherwise affect~~ the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 27. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for ~~two years~~ *an indeterminate term* to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health~~, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment~~. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 28. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The ~~two-year~~ *indeterminate* term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. ~~The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.~~

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to ~~extended~~ *all* commitment proceedings.

SEC. 29. Section 6605 of the Welfare and Institutions Code is amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person.* The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) ~~The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.~~ *If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.*

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for ~~a~~ *an indeterminate* period ~~of two years~~ from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he

or she shall be unconditionally released and unconditionally discharged.

SEC. 30. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent~~ *or an* unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 31. Intent Clause

It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

SEC. 32. Severability Clause

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 33. Amendment Clause

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

PROPOSITION 84

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Division 43 is added to the Public Resources Code, to read:

DIVISION 43. THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

CHAPTER 1. GENERAL PROVISIONS

75001. This Division shall be known and may be cited as the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

75002. The people of California find and declare that protecting the state's drinking water and water resources is vital to the public health, the state's economy, and the environment.

75002.5. The people of California further find and declare that the state's waters are vulnerable to contamination by dangerous bacteria, polluted runoff, toxic chemicals, damage from catastrophic floods and the demands of a growing population. Therefore, actions must be taken to ensure safe drinking water and a reliable supply of water for farms, cities and businesses, as well as to protect California's rivers, lakes, streams, beaches, bays and coastal waters, for this and future generations.

75003. The people of California further find and declare that it is

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bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment.

6600.1. If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health, one or both of whom may be independent professionals as defined in subdivision (g). If both evaluators

concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or

her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) (1) The department shall provide the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, with a semiannual update on the progress made to hire qualified state employees to conduct the evaluation required pursuant to subdivision (d). The first update shall be provided no later than July 10, 2009.

(2) On or before January 2, 2010, the department shall report to the Legislature on all of the following:

(A) The costs to the department for the sexual offender commitment program attributable to the provisions in Proposition 83 of the November 2006 general election, otherwise known as Jessica's Law.

(B) The number and proportion of inmates evaluated by the department for commitment to the program as a result of the expanded evaluation and commitment criteria in Jessica's Law.

(C) The number and proportion of those inmates who have actually been committed for treatment in the program.

(3) This section shall remain in effect and be repealed on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history.

This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the

Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) This section shall become operative on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

6601.3. (a) Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

(b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full evaluation described in subdivisions (c) to (i), inclusive, of Section 6601.

6601.5. Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually

violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

6602.5. (a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a 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.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles

County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

6603. (a) 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. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

6603.3. (a) (1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a person subject to this article, family members of the person subject to this article, or any other person, the name, address, telephone number, or other identifying information of a victim or witness whose name is disclosed to the attorney pursuant to Section 6603 and Chapter 1 (commencing with Section 2016.010) of Part 4 of Title 4 of the Code of Civil Procedure, unless specifically permitted to do so by the court after a hearing and showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed, the name, address, telephone number, or other identifying information of a victim or witness to persons employed by the attorney or to a person hired or appointed for the purpose of assisting the person subject to this article in the preparation of the case, if that disclosure is required for that preparation. Persons provided this information shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) A willful violation of this subdivision by an attorney, persons employed by an attorney, or persons appointed by the court is a misdemeanor.

(b) If the person subject to this article is acting as his or her own attorney, the court shall endeavor to protect the name, address, telephone number, or other identifying information of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

6603.5. No employee or agent of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, or the State Department of Mental Health shall disclose to any person, except to employees or agents of each named department, the prosecutor, the respondent's counsel, licensed private investigators hired or appointed for the respondent, or other persons or agencies where authorized or required by law, the name, address, telephone number, or other identifying information of a person who was involved in a civil commitment hearing under this article as the victim of a sex offense except where authorized or required by law.

6603.7. (a) Except as provided in Section 6603.3, the court, at the request of the victim of a sex offense relevant in a proceeding under this article, may order the identity of the victim in all records and during all proceedings to be either Jane Doe or John Doe, if the court finds that the order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the party petitioning for commitment under this article or the person subject to this article.

(b) If the court orders the victim to be identified as Jane Doe or John Doe pursuant to subdivision (a), and if there is a jury trial, the court shall instruct the jury at the beginning and at the end of the trial that the victim is being so identified only for the purposes of protecting his or her privacy.

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6604.1. (a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The State Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) If the State Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best

interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney, or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. Where the person's failure to participate in or complete treatment is relied upon as proof that the person's condition has not changed, and there is evidence to support that reliance, the jury shall be instructed substantially as follows:

"The committed person's failure to participate in or complete the State Department of Mental Health Sex Offender Commitment Program (SOCP) are facts that, if proved, may be considered as evidence that the committed person's condition has not changed. The weight to be given that evidence is a matter for the jury to determine."

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health

which shall afford the person with treatment for his or her diagnosed mental disorder. Persons who decline treatment shall be offered the opportunity to participate in treatment on at least a monthly basis.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

(d) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, and consistent with information and standards described in subdivision (c), the department is authorized to provide the programming using an outpatient/day treatment model, wherein treatment is provided by licensed professional clinicians in living units not licensed as health facility beds within a secure facility setting, on less than a 24-hour a day basis. The department shall take into consideration the unique characteristics, individual needs, and choices of persons committed under this article, including whether or not a person needs antipsychotic medication, whether or not a person has physical medical conditions, and whether or not a person chooses to participate in a specified course of offender treatment. The department shall ensure that policies and procedures are in place that address changes in patient needs, as well as patient choices, and respond to treatment needs in a timely fashion. The department, in implementing this subdivision, shall be allowed by the State Department of Health Services to place health facility beds at Coalinga State Hospital in suspense for a period of up to six years. Coalinga State Hospital may remove all or any portion of its voluntarily suspended beds into active license status by request to the State Department of Health Services. The facility's request shall be granted unless the suspended beds fail to comply with current operational requirements for licensure.

(e) The department shall meet with each patient who has chosen not to participate in a specific course of offender treatment during monthly treatment planning conferences. At these conferences the department shall explain treatment options available to the patient, offer and re-offer treatment to the patient, seek to obtain the patient's cooperation in the recommended treatment options, and document these steps in the patient's health record. The fact that a patient has chosen not to participate in treatment in the past shall not establish that the patient continues to choose not to participate.

6607. (a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall

forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel. The person petitioning for conditional release or unconditional discharge shall serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 30 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in

sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an

arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

6608.7. The State Department of Mental Health may enter into an interagency agreement or contract with the Department of Corrections or with local law enforcement agencies for services related to supervision or monitoring of sexually violent predators who have been conditionally released into the community under the forensic conditional release program pursuant to this article.

6608.8. (a) For any person who is proposed for community outpatient

treatment under the forensic conditional release program, the department shall provide to the court a copy of the written contract entered into with any public or private person or entity responsible for monitoring and supervising the patient's outpatient placement and treatment program. This subdivision does not apply to subcontracts between the contractor and clinicians providing treatment and related services to the person.

(b) The terms and conditions of conditional release shall be drafted to include reasonable flexibility to achieve the aims of conditional release, and to protect the public and the conditionally released person.

(c) The court in its discretion may order the department to, notwithstanding Section 4514 or 5328, provide a copy of the written terms and conditions of conditional release to the sheriff or chief of police, or both, that have jurisdiction over the proposed or actual placement community.

(d) (1) Except in an emergency, the department or its designee shall not alter the terms and conditions of conditional release without the prior approval of the court.

(2) The department shall provide notice to the person committed under this article and the district attorney or designated county counsel of any proposed change in the terms and conditions of conditional release.

(3) The court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change. The hearing shall be held as soon as is practicable.

(4) If a hearing on the proposed change is held, the court shall state its findings on the record. If the court approves a change in the terms and conditions of conditional release without a hearing, the court shall issue a written order.

(5) In the case of an emergency, the department or its designee may deviate from the terms and conditions of the conditional release if necessary to protect public safety or the safety of the person. If a hearing on the emergency is set by the court or requested by either party, the hearing shall be held as soon as practicable. The department, its designee, and the parties shall endeavor to resolve routine matters in a cooperative fashion without the need for a formal hearing.

(e) Notwithstanding any provision of this section, including, but not limited to, subdivision (d), matters concerning the residential placement, including any changes or proposed changes in the residence of the person, shall be considered and determined pursuant to Section 6609.1.

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 × 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for

ATTACHMENT "C"

JOHN CHIANG
California State Controller

November 14, 2012

The Honorable Mark Leno, Chair
Senate Budget and Fiscal Review Committee
Joint Legislative Budget Committee
State Capitol, Room 5100
Sacramento, CA 95814

The Honorable Robert Blumenfield, Chair
Assembly Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

Re: State Mandated Program Cost Report (AB3000)
Chapter 179, Statutes of 2007, Government Code Section 17562(b)(1)

Dear Senator Leno and Assembly Member Blumenfield:

This report provides the information required pursuant to Government Code (GC) section 17562(b)(1). It summarizes mandate payments by fiscal year (FY) and reports the deficiencies and surpluses. This report consists of three parts, as follows:

1. FY 2012-13 State Mandated Program Appropriations and Payments (Schedules A and A1)
2. FY 2010-11 and Prior Years' State Mandated Program Claims Data, including Net Deficiencies and Surpluses (Schedules B through B4)
3. List of Incorrect Reduction Claims Filed with the Commission on State Mandates (Schedule C)

As reflected on Schedule B, as of September 30, 2012, the amount owed to local agencies, school and community college districts is $5.6 billion:

Local Agencies	$1.6 billion
School Districts	$3.7 billion
Community College Districts	$0.3 billion
Total	$5.6 billion

Accrued interest as of June 30, 2012, at the Pooled Money Investment Account rates, due to local agencies, school and community college districts is estimated to be $251.5 million ($175

300 Capitol Mall, Suite 1850, Sacramento, CA 95814 ♦ P.O. Box 942850, Sacramento, CA 94250 ♦ (916) 445-2636 ♦ Fax: (916) 322-4404
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www.sco.ca.gov

million, $67.9 million, and $8.6 million, respectively). The accrued interest is not included in the enclosed report, nor in the $5.6 billion amount identified on page one. Pursuant to GC section 17561.5, interest begins to accrue as of the 366th day after adoption of the statewide cost estimate for the initial claims. For subsequent claims, interest begins to accrue on August 16th following the filing deadline. The interest on unpaid claims will continue to accrue until the claims are fully paid.

Pending litigation listed below and incorrect reduction claims on mandates (Schedule C) may have a significant impact on accounts payable when decisions are rendered:

- Graduation Requirements
- Discharge of Storm Water Runoff
- Municipal Storm Water and Urban Runoff Discharges
- 2010-11 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process

In addition to the State Mandated Program Cost Report, a disk containing an electronic version is enclosed. If you have any questions, you may contact Jay Lal at (916) 324-0256.

Sincerely,

(Original Signed By)

JOHN CHIANG
California State Controller

Enclosures

cc: Ms. Ana J. Matosantos, Department of Finance
Ms. Marianne O'Malley, Office of Legislative Analyst
Ms. Heather Halsey, Commission on State Mandates

STATE MANDATED PROGRAM COST REPORT

(AB 3000)

As of September 30, 2012

Prepared by

Division of Accounting and Reporting
Local Reimbursements Section

Note: This report provides information on State Mandated Program costs for local agencies, school and community college districts pursuant to Government Code section 17562 (b)(1).

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Schedule A:
Summary of State Mandated Program Appropriations and Payments Made in Fiscal Year 2012-13

State Controller's Office
Division of Accounting and Reporting
Summary of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Account Number	Legal Reference	Fiscal Year of Claims Paid	Appropriations Reverted as of 6/30/2012	Appropriation Balances as of 07/01/2012	Add: Receipts and Recovered Amounts	Less: Mandated Program Payments (see Schedule A1)	Appropriation Balances as of 09/30/2012
LOCAL AGENCIES							
General Fund							
0001-8885-2012-295-11	Ch. 21,29/12	2010-11	$ -	$ 48,786,000	$ 9,544,185	$ 46,055,232	$ 12,274,953
0001-8885-2011-295-11	Ch. 33/11	2009-10	$ -	$ 9,894,584	$ 23,109	$ 262,319	$ 9,655,374
0001-8885-2010-295-11	Ch. 712/10		$ -	$ 30,466,522	$ 572,230	$ -	$ 31,038,752
0001-8885-2009-295-11	Ch. 1/09		$ 861,757	$ -	$ -	$ -	$ -
Total General Fund			**$ 861,757**	**$ 89,147,106**	**$ 10,139,524**	**$ 46,317,551**	**$ 52,969,079**
Non - General Fund							
Department of Motor Vehicle							
0044-8885-2012-295-98-00-146-089	Ch. 21,29/12	2010-11	$ -	$ 2,501,000	$ -	$ 2,402,441	$ 98,559
0044-8885-2011-295-98-00-146-089	Ch. 33/11		$ -	$ 1,091,819	$ -	$ -	$ 1,091,819
0044-8885-2010-295-98-00-146-089	Ch. 712/10		$ -	$ 1,615,381	$ -	$ -	$ 1,615,381
0044-8885-2009-295-98-00-146-089	Ch. 1/09		$ 212,049	$ -	$ -	$ -	$ -
Subtotal			**$ 212,049**	**$ 5,208,200**	**$ -**	**$ 2,402,441**	**$ 2,805,759**
Department of Pesticide Regulations							
0106-8885-2012-295-98-01-120-089	Ch. 21,29/12	2010-11	$ -	$ 35,000	$ -	$ 18,076	$ 16,924
0106-8885-2011-295-98-01-120-089	Ch. 33/11		$ -	$ 49,975	$ -	$ -	$ 49,975
0106-8885-2010-295-98-01-120-089	Ch. 712/10		$ -	$ 84,911	$ -	$ -	$ 84,911
Subtotal			**$ -**	**$ 169,886**	**$ -**	**$ 18,076**	**$ 151,810**
Total Non General Fund			**$ 212,049**	**$ 5,378,086**	**$ -**	**$ 2,420,517**	**$ 2,957,569**
Total Local Agencies			**$ 1,073,806**	**$ 94,525,192**	**$ 10,139,524**	**$ 48,738,068**	**$ 55,926,648**
SCHOOL DISTRICTS							
0001-6100-2012-295-98	Ch. 21,29/12	2010-11 and Prior	$ -	$ 36,000	$ 13,000	$ 35,000	$ 14,000
0001-6100-2011-295-98	Ch. 33/11	2009-10 and Prior	$ -	$ 6,632,077	$ 435,383	$ 6,632,032	$ 435,428
0001-6100-2010-295-98	Ch. 712/10		$ -	$ 7,630,942	$ 22,311	$ -	$ 7,653,253
0001-6100-2009-295-98	Ch. 1/09		$ 30,001	$ -	$ -	$ -	$ -
Total School Districts			**$ 30,001**	**$ 14,299,019**	**$ 470,694**	**$ 6,667,032**	**$ 8,102,681**
COMMUNITY COLLEGE DISTRICTS							
0001-6870-2012-295-98	Ch. 21,29/12	2010-11 and Prior	$ -	$ 17,000	$ 2,000	$ 11,000	$ 8,000
0001-6870-2011-295-98	Ch. 33/11	2009-10 and Prior	$ -	$ 4,699,767	$ 1,876,691	$ 4,693,502	$ 1,882,956
0001-6870-2010-295-98	Ch. 712/10		$ -	$ 915,773	$ 381,373	$ -	$ 1,297,146
0001-6870-2009-295-98	Ch. 1/09		$ 3,000	$ -	$ -	$ -	$ -
Total Community College Districts			**$ 3,000**	**$ 5,632,540**	**$ 2,260,064**	**$ 4,704,502**	**$ 3,188,102**
Total School and Community College Districts			**$ 33,001**	**$ 19,931,559**	**$ 2,730,758**	**$ 11,371,534**	**$ 11,290,783**
Grand Total Local Agencies, School and Community College Districts			**$ 1,106,807**	**$ 114,456,751**	**$ 12,870,282**	**$ 60,109,602**	**$ 67,217,431**

Schedule A1:
Details of State Mandated Program Payments Made in Fiscal Year 2012-13 for Local Agencies, School and Community College Districts

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Local Agencies			
0001-8885-2012-295-11			
Fiscal Year 2010-11			
Allocation of Property Tax Revenues	Ch. 697/92	152	$ 495,047
Child Abduction and Recovery	Ch. 1399/76	13	$ 11,406,520
Countywide Tax Rates	Ch. 921/87	90	$ 242,747
Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	$ 167,000
Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 6,984,998
Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	$ 1,368,714
Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 1,944,000
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 1,695,000
Medi-Cal Beneficiary Probate	Ch. 102/81	43	$ 9,436
Peace Officers Personnel Records: Unfounded Complaints and Discovery	Ch. 630/78	264	$ 656,999
Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 327,684
Sexually Violent Predators	Ch. 762/95	175	$ 20,754,301
Threats Against Peace Officers	Ch. 1249/92	163	$ 2,786
Fiscal Year 2010-11 Total			**$ 46,055,232**
0001-8885-2012-295-11 Total			**$ 46,055,232**
0001-8885-2011-295-11			
Fiscal Year 2009-10			
Child Abduction and Recovery	Ch. 1399/76	13	$ 1,882
Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	$ 1,281
Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 129,767
Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	$ 79,740
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 24,073
Peace Officers Personnel Records: Unfounded Complaints and Discovery	Ch. 630/78	264	$ 12,636
Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 12,940
Fiscal Year2009-10 Total			**$ 262,319**
0001-8885-2011-295-11 Total			**$ 262,319**
0044-8885-2012-295			
Fiscal Year 2010-11			
Administrative License Suspension	Ch.1460/89	246	$ 2,402,441
Fiscal Year 2010-11 Total			**$ 2,402,441**
0044-8885-2012-295 Total			**$ 2,402,441**
0106-8885-2012-295			
Fiscal Year 2010-11			
Pesticide Use Reports	Ch. 1200/89	121	$ 18,076
Fiscal Year 2010-11 Total			**$ 18,076**
0106-8885-2012-295 Total			**$ 18,076**
Local Agencies Total			**$ 48,738,068**

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
School Districts			
0001-6100-2012-295			
Fiscal Year 2010-11			
Agency Fee Arrangements	Ch. 893/00	269	$ 1,000
AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,000
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 1,000
Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 1,000
Charter Schools I, II, III	Ch. 781/92	278	$ 1,000
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75; Ch. 1213/91	11	$ 1,000
Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	$ 1,000
Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 36/77, et.al.	272	$ 1,000
Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	$ 1,000
Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	$ 1,000
County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 1,000
Criminal Background Checks	Ch. 588/97	183	$ 1,000
Criminal Background Checks II	Ch. 594/98	251	$ 1,000
Differential Pay and Reemployment	Ch. 30/98	253	$ 1,000
Financial and Compliance Audits	Ch. 36/77	192	$ 1,000
Habitual Truant	Ch. 1184/75	166	$ 1,000
High School Exit Examination	Ch. 1/99	268	$ 1,000
Immunization Records	Ch. 1176/77	32	$ 1,000
Immunization Records - Hepatitis B	Ch. 325/78	230	$ 1,000
Intradistrict Attendance	Ch. 161/93	153	$ 1,000
Juvenile Court Notices II	Ch. 1423/84	155	$ 1,000
Mandate Reimbursement Process	Ch. 486/75	42	$ 1,000
Notification of Truancy	Ch. 498/83	48	$ 1,000
Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 1,000
Physical Performance Tests	Ch. 975/95	173	$ 1,000
Prevailing Wage Rate	Ch. 1249/78	304	$ 1,000
Pupil Health Screenings	Ch. 1208/76	261	$ 1,000
Pupil Promotion and Retention	Ch. 100/91	244	$ 1,000
Pupil Safety Notices	Ch. 498/83	280	$ 1,000
Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 498/83, et al.	176	$ 1,000
School Accountability Report Cards	Ch. 1463/89	171	$ 1,000
School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 1,000
School District Reorganization	Ch. 1192/80	228	$ 1,000
The Stull Act	Ch. 498/83	260	$ 1,000
Fiscal Year 2010-11 Total			**$ 34,000**
Fiscal Year 2007-08			
Absentee Ballots	Ch. 77/78	170	$ 1,000
Fiscal Year 2007-08 Total			**$ 1,000**
0001-6100-2012-295 Total			**$ 35,000**

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
0001-6100-2011-295			
Fiscal Year 2009-10			
Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	$ 19,282
Fiscal Year 2009-10 Total			**$ 19,282**
Fiscal Year 2008-09			
Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	$ 140,964
Fiscal Year 2008-09 Total			**$ 140,964**
Fiscal Year 2007-08			
Charter Schools I, II, III	Ch. 781/92	278	$ 32,978
Fiscal Year 2007-08 Total			**$ 32,978**
Fiscal Year 2006-07			
Physical Performance Tests	Ch. 975/95	173	$ 391,380
Fiscal Year 2006-07 Total			**$ 391,380**
Fiscal Year 2005-06			
Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 36/77, et al.	272	$ 1,042,210
Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 24,234
Notification of Truancy	Ch. 498/83	48	$ 177,302
Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 208,924
AIDS Prevention Instruction II	Ch. 818/91	250	$ 89,163
Pupil Health Screenings	Ch. 1208/76	261	$ 60,588
Physical Performance Tests	Ch. 975/95	173	$ 1,711,162
Juvenile Court Notices II	Ch. 1423/84	155	$ 51,718
Immunization Records	Ch. 1176/77	32	$ 703,800
Habitual Truant	Ch. 1184/75	166	$ 10,039
Criminal Background Checks	Ch. 588/97	183	$ 166,751
Financial and Compliance Audits	Ch. 36/77	192	$ 57,181
School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 44,661
Immunization Records - Hepatitis B	Ch. 325/78	230	$ 869,616
Criminal Background Checks II	Ch. 594/98	251	$ 5,374
Pupil Promotion and Retention	Ch. 100/91	244	$ 14,664
Differential Pay and Reemployment	Ch. 30/98	253	$ 968
Fiscal Year 2005-06 Total			**$ 5,238,355**
Fiscal Year 2002-03			
Agency Fee Arrangements	Ch. 893/00	269	$ 1,976
Fiscal Year 2002-03 Total			**$ 1,976**
Fiscal Year 2001-02			
Notification of Truancy	Ch. 498/83	48	$ 34,625
Agency Fee Arrangements	Ch. 893/00	269	$ 8,200
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 31,669
Fiscal Year 2001-02 Total			**$ 74,494**

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Fiscal Year 2000-01			
Notification of Truancy	Ch. 498/83	48	$ 10,223
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75; Ch. 1213/91	11	$ 137,065
Agency Fee Arrangements	Ch. 893/00	269	$ 2,469
Fiscal Year 2000-01 Total			**$ 149,757**
Fiscal Year 1999-00			
Notification of Truancy	Ch. 498/83	48	$ 8,647
Intradistrict Attendance	Ch. 161/93	153	$ 36,098
Fiscal Year 1999-00 Total			**$ 44,745**
Fiscal Year 1997-98			
The Stull Act	Ch. 498/83	260	$ 538,101
Fiscal Year 1997-98 Total			**$ 538,101**
0001-6100-2011-295 Total			**$ 6,632,032**
School Districts Total			**$ 6,667,032**

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Community College Districts			
0001-6870-2012-295			
Fiscal Year 2010-11			
Agency Fee Arrangements	Ch. 893/00	270	$ 1,000
California Grants	Ch. 403/00	302	$ 1,000
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 1,000
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 1,000
Enrollment Fee Collection and Waivers	Title 5	267	$ 1,000
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 1,000
Mandate Reimbursement Process	Ch. 486/75	237	$ 1,000
Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,000
Prevailing Wage Rate	Ch. 1249/78	303	$ 1,000
Tuition Fee Waivers	Ch. 36/77	301	$ 1,000
Fiscal Year 2010-11 Total			**$ 10,000**
Fiscal Year 2008-09			
Reporting Improper Governmental Activities	Ch. 416/01	294	$ 1,000
Fiscal Year 2008-09 Total			**$ 1,000**
0001-6870-2012-295 Total			**$ 11,000**
0001-6870-2011-295			
Fiscal Year 2009-10			
Tuition Fee Waivers	Ch. 36/77	301	$ 13,000
Fiscal Year 2009-10 Total			**$ 13,000**
Fiscal Year 2006-07			
Reporting Improper Governmental Activities	Ch. 416/01	294	$ 11,708
Fiscal Year 2006-07 Total			**$ 11,708**
Fiscal Year 2004-05			
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 2,086,643
Fiscal Year 2004-05 Total			**$ 2,086,643**
Fiscal Year 2003-04			
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 1,225,152
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 158,351
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 7,708
Fiscal Year 2003-04 Total			**$ 1,391,211**
Fiscal Year 2002-03			
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 10,203
Agency Fee Arrangements	Ch. 893/00	270	$ 11,504
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 44,751
Fiscal Year 2002-03 Total			**$ 66,458**

State Controller's Office
Division of Accounting and Reporting
Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Fiscal Year 2001-02			
Agency Fee Arrangements	Ch. 893/00	270	$ 29,244
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 28,466
Fiscal Year 2001-02 Total			**$ 57,710**
Fiscal Year 2000-01			
Agency Fee Arrangements	Ch. 893/00	270	$ 6,999
Fiscal Year 2000-01 Total			**$ 6,999**
Fiscal Year 1998-99			
Enrollment Fee Collection and Waivers	Title 5	267	$ 1,059,773
Fiscal Year 1998-99 Total			**$ 1,059,773**
0001-6870-2011-295 Total			**$ 4,693,502**
Community College Districts Total			**$ 4,704,502**
School and Community College Districts Total			**$ 11,371,534**
Grand Total Local Agencies, School and Community College Districts			**$ 60,109,602**

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Schedule B:
Summary of State Mandated Programs for Fiscal Year 2010-11 and Prior Years:
Claims Received/Adjusted, Payments, Receivables, Net Deficiencies and Surpluses

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs for Fiscal Year 2010-11 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

	Fiscal Year	Schedules	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
			Program Costs	Less: Net Payments[1]	A/P Balance[2]	Established A/R[3]	Less: Recovered Amount	A/R Balance[4]	Net Balance[5]
GENERAL GOVERNMENT									
LOCAL AGENCIES									
Initial and Annual Claims	2010-11 and Prior	B1	$ 1,294,248,596	$ 427,684,313	$ 866,564,283	$ 97,168,039	$ 67,908,815	$ 29,259,224	$ 837,305,059
Initial and Annual Claims (Proposition 1A)[6]	2003-04 and Prior	B2	$ 1,031,763,361	$ 303,939,963	$ 727,823,398	$ 58,432,333	$ 49,410,334	$ 9,021,999	$ 718,801,399
Total Local Agencies			**$ 2,326,011,957**	**$ 731,624,276**	**$ 1,594,387,681**	**$ 155,600,372**	**$ 117,319,149**	**$ 38,281,223**	**$ 1,556,106,458**
EDUCATION									
SCHOOL DISTRICTS	2010-11 and Prior	B3	$ 5,167,317,567	$ 1,416,030,688	$ 3,751,286,879	$ 202,703,682	$ 152,321,190	$ 50,382,492	$ 3,700,904,387
COMMUNITY COLLEGE DISTRICTS	2010-11 and Prior	B4	$ 384,049,240	$ 66,312,963	$ 317,736,277	$ 13,632,728	$ 9,680,257	$ 3,952,471	$ 313,783,806
Total School and Community College Districts			**$ 5,551,366,807**	**$ 1,482,343,651**	**$ 4,069,023,156**	**$ 216,336,410**	**$ 162,001,447**	**$ 54,334,963**	**$ 4,014,688,193**
Grand Total Local Agencies, School and Community College Districts			**$ 7,877,378,764**	**$ 2,213,967,927**	**$ 5,663,410,837**	**$ 371,936,782**	**$ 279,320,596**	**$ 92,616,186**	**$ 5,570,794,651**

Footnotes:

[1] Total Payments less Overpayments equals Net Payments.

[2] Amount Due to Local Agencies, School and Community College Districts.

[3] Total accounts receivable established due to desk review and field audit claim adjustments.

[4] Amount Due from Local Agencies, School and Community College Districts.

[5] Net Amount of Deficiencies and Surpluses. A/P Balance less A/R Balance equals Net Balance.

[6] Claims filed for fiscal year 2003-04 and prior payable in 15-years must be paid by 2020-21 pursuant to Government Code section 17617.

Schedule B1:
Local Agencies

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2010-11	Absentee Ballots	Ch. 77/78	2	$ 24,839,999	$ -	$ 24,839,999	$ -	$ -	$ -	$ 24,839,999
2010-11	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 35,138	$ -	$ 35,138	$ -	$ -	$ -	$ 35,138
2010-11	Administrative License Suspension	Ch.1460/89	246	$ 2,407,825	$ 2,402,441	$ 5,384	$ -	$ -	$ -	$ 5,384
2010-11	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 16,181,454	$ -	$ 16,181,454	$ -	$ -	$ -	$ 16,181,454
2010-11	Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	$ 167,693	$ 167,000	$ 693	$ -	$ -	$ -	$ 693
2010-11	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 57,816	$ -	$ 57,816	$ -	$ -	$ -	$ 57,816
2010-11	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 6,993,913	$ 6,984,998	$ 8,915	$ -	$ -	$ -	$ 8,915
2010-11	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	$ 1,497,023	$ 1,368,714	$ 128,309	$ -	$ -	$ -	$ 128,309
2010-11	Domestic Violence Background Checks	Ch. 713/01	322	$ 2,208,200	$ -	$ 2,208,200	$ -	$ -	$ -	$ 2,208,200
2010-11	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 1,987,049	$ 1,944,000	$ 43,049	$ -	$ -	$ -	$ 43,049
2010-11	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	$ 20,442,289	$ -	$ 20,442,289	$ -	$ -	$ -	$ 20,442,289
2010-11	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 1,751,313	$ 1,695,000	$ 56,313	$ -	$ -	$ -	$ 56,313
2010-11	Identity Theft	Ch. 956/00	321	$ 9,792,559	$ -	$ 9,792,559	$ -	$ -	$ -	$ 9,792,559
2010-11	In-Home Support Services II	Ch. 90/99	289	$ 15,567	$ -	$ 15,567	$ -	$ -	$ -	$ 15,567
2010-11	Local Government Employee Relations	Ch. 901/00	298	$ 1,157,287	$ -	$ 1,157,287	$ -	$ -	$ -	$ 1,157,287
2010-11	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 77,349	$ -	$ 77,349	$ -	$ -	$ -	$ 77,349
2010-11	Mandate Reimbursement Process	Ch. 486/75	41	$ 1,415,047	$ -	$ 1,415,047	$ -	$ -	$ -	$ 1,415,047
2010-11	Modified Primary Election	Ch. 898/00	323	$ 2,509	$ -	$ 2,509	$ -	$ -	$ -	$ 2,509
2010-11	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 2,774,562	$ -	$ 2,774,562	$ -	$ -	$ -	$ 2,774,562
2010-11	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 16,181,289	$ -	$ 16,181,289	$ -	$ -	$ -	$ 16,181,289
2010-11	Peace Officers Personnel Records: Unfounded Complaints and Discovery	Ch. 630/78	264	$ 661,245	$ 656,999	$ 4,246	$ -	$ -	$ -	$ 4,246
2010-11	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 6,334,127	$ -	$ 6,334,127	$ -	$ -	$ -	$ 6,334,127
2010-11	Permanent Absent Voters II	Ch. 922/01	324	$ 2,012,753	$ -	$ 2,012,753	$ -	$ -	$ -	$ 2,012,753
2010-11	Voter Registration Procedures	Ch. 704/75	56	$ 1,275,498	$ -	$ 1,275,498	$ -	$ -	$ -	$ 1,275,498
2010-11 Total				**$ 120,269,504**	**$ 15,219,152**	**$ 105,050,352**	**$ -**	**$ -**	**$ -**	**$ 105,050,352**
2009-10	Absentee Ballots	Ch. 77/78	2	$ 24,710,823	$ -	$ 24,710,823	$ -	$ -	$ -	$ 24,710,823
2009-10	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 32,562	$ -	$ 32,562	$ -	$ -	$ -	$ 32,562
2009-10	Administrative License Suspension	Ch.1460/89	246	$ 2,442,853	$ 2,363,040	$ 79,813	$ 2,933	$ -	$ 2,933	$ 76,880
2009-10	Airport Land Use Commission/Plans	Ch. 644/94	178	$ 1,263,401	$ -	$ 1,263,401	$ -	$ -	$ -	$ 1,263,401
2009-10	Animal Adoption	Ch. 752/98	213	$ 1,639,542	$ -	$ 1,639,542	$ -	$ -	$ -	$ 1,639,542
2009-10	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 12,927	$ -	$ 12,927	$ -	$ -	$ -	$ 12,927
2009-10	Coroner's Costs	Ch. 498/77	88	$ 8,996	$ -	$ 8,996	$ -	$ -	$ -	$ 8,996
2009-10	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 16,504,011	$ -	$ 16,504,011	$ -	$ -	$ -	$ 16,504,011

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2009-10	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 297,792	$ -	$ 297,792	$ -	$ -	$ -	$ 297,792
2009-10	Crime Victims' Rights	Ch. 411/95	158	$ 25,577	$ -	$ 25,577	$ -	$ -	$ -	$ 25,577
2009-10	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 37,798	$ -	$ 37,798	$ -	$ -	$ -	$ 37,798
2009-10	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 7,309,559	$ 7,309,559	$ -	$ 65,723	$ 34,281	$ 31,442	$ (31,442)
2009-10	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	$ 1,366,505	$ 1,366,505	$ -	$ 7,643	$ -	$ 7,643	$ (7,643)
2009-10	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,871,143	$ -	$ 1,871,143	$ -	$ -	$ -	$ 1,871,143
2009-10	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 4,732	$ -	$ 4,732	$ -	$ -	$ -	$ 4,732
2009-10	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	$ 134,478,404	$ -	$ 134,478,404	$ -	$ -	$ -	$ 134,478,404
2009-10	Identity Theft	Ch. 956/00	321	$ 9,361,799	$ -	$ 9,361,799	$ -	$ -	$ -	$ 9,361,799
2009-10	In-Home Support Services II	Ch. 90/99	289	$ 20,569	$ -	$ 20,569	$ -	$ -	$ -	$ 20,569
2009-10	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	$ 7,017	$ -	$ 7,017	$ -	$ -	$ -	$ 7,017
2009-10	Local Government Employee Relations	Ch. 901/00	298	$ 703,728	$ -	$ 703,728	$ -	$ -	$ -	$ 703,728
2009-10	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 518,685	$ -	$ 518,685	$ -	$ -	$ -	$ 518,685
2009-10	Mandate Reimbursement Process	Ch. 486/75	41	$ 5,494,668	$ -	$ 5,494,668	$ -	$ -	$ -	$ 5,494,668
2009-10	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 17,935	$ -	$ 17,935	$ -	$ -	$ -	$ 17,935
2009-10	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 219,819	$ -	$ 219,819	$ -	$ -	$ -	$ 219,819
2009-10	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	$ 3,011	$ -	$ 3,011	$ -	$ -	$ -	$ 3,011
2009-10	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	$ 1,345	$ -	$ 1,345	$ -	$ -	$ -	$ 1,345
2009-10	Modified Primary Election	Ch. 898/00	323	$ 468,288	$ -	$ 468,288	$ -	$ -	$ -	$ 468,288
2009-10	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 2,806,076	$ -	$ 2,806,076	$ -	$ -	$ -	$ 2,806,076
2009-10	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 120,902	$ -	$ 120,902	$ -	$ -	$ -	$ 120,902
2009-10	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 16,636,791	$ -	$ 16,636,791	$ -	$ -	$ -	$ 16,636,791
2009-10	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 1,466	$ -	$ 1,466	$ -	$ -	$ -	$ 1,466
2009-10	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 6,657,034	$ -	$ 6,657,034	$ -	$ -	$ -	$ 6,657,034
2009-10	Perinatal Services	Ch. 1603/90	124	$ 47,464	$ -	$ 47,464	$ -	$ -	$ -	$ 47,464
2009-10	Permanent Absent Voters	Ch. 1422/82	83	$ 1,310,491	$ -	$ 1,310,491	$ -	$ -	$ -	$ 1,310,491
2009-10	Permanent Absent Voters II	Ch. 922/01	324	$ 121,578	$ -	$ 121,578	$ -	$ -	$ -	$ 121,578
2009-10	Pesticide Use Reports	Ch. 1200/89	121	$ 47,069	$ 33,025	$ 14,044	$ -	$ -	$ -	$ 14,044
2009-10	Photographic Record of Evidence	Ch. 875/85	215	$ 2,177	$ -	$ 2,177	$ -	$ -	$ -	$ 2,177
2009-10	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 7,804	$ -	$ 7,804	$ -	$ -	$ -	$ 7,804
2009-10	Search Warrant: AIDS	Ch. 1088/88	73	$ 48,090	$ -	$ 48,090	$ -	$ -	$ -	$ 48,090
2009-10	Stolen Vehicle Notification	Ch. 337/90	120	$ 13,379	$ -	$ 13,379	$ -	$ -	$ -	$ 13,379
2009-10	Voter Registration Procedures	Ch. 704/75	56	$ 1,205,598	$ -	$ 1,205,598	$ -	$ -	$ -	$ 1,205,598
2009-10 Total				**$ 237,849,408**	**$ 11,072,129**	**$ 226,777,279**	**$ 76,299**	**$ 34,281**	**$ 42,018**	**$ 226,735,261**
2008-09	Absentee Ballots	Ch. 77/78	2	$ 25,668,036	$ 25,668,036	$ -	$ 1,012,417	$ 468,082	$ 544,335	$ (544,335)
2008-09	Administrative License Suspension	Ch.1460/89	246	$ 2,674,609	$ 2,674,609	$ -	$ 103,932	$ 2,658	$ 101,274	$ (101,274)
2008-09	Animal Adoption	Ch. 752/98	213	$ 23,049,564	$ -	$ 23,049,564	$ -	$ -	$ -	$ 23,049,564

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2008-09	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 171,702	$ -	$ 171,702	$ -	$ -	$ -	$ 171,702
2008-09	Coroner's Costs	Ch. 498/77	88	$ 113,089	$ -	$ 113,089	$ -	$ -	$ -	$ 113,089
2008-09	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 16,060,195	$ -	$ 16,060,195	$ -	$ -	$ -	$ 16,060,195
2008-09	Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	$ 172,788	$ 172,788	$ -	$ 2,257	$ -	$ 2,257	$ (2,257)
2008-09	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 263,698	$ -	$ 263,698	$ -	$ -	$ -	$ 263,698
2008-09	Crime Victims' Rights	Ch. 411/95	158	$ 363,356	$ -	$ 363,356	$ -	$ -	$ -	$ 363,356
2008-09	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 567,312	$ -	$ 567,312	$ -	$ -	$ -	$ 567,312
2008-09	DNA Database	Ch. 822/00	266	$ 146,180	$ -	$ 146,180	$ -	$ -	$ -	$ 146,180
2008-09	Domestic Violence Background Checks	Ch. 713/01	322	$ 2,086,981	$ -	$ 2,086,981	$ -	$ -	$ -	$ 2,086,981
2008-09	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,174,267	$ 2,174,267	$ -	$ 298,196	$ 115,151	$ 183,045	$ (183,045)
2008-09	False Reports of Police Misconduct	Ch. 590/95	257	$ 4,297	$ -	$ 4,297	$ -	$ -	$ -	$ 4,297
2008-09	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 100,886	$ -	$ 100,886	$ -	$ -	$ -	$ 100,886
2008-09	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 31,906	$ -	$ 31,906	$ -	$ -	$ -	$ 31,906
2008-09	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	$ 32,151,097	$ 2,291	$ 32,148,806	$ -	$ -	$ -	$ 32,148,806
2008-09	Identity Theft	Ch. 956/00	321	$ 10,110,100	$ -	$ 10,110,100	$ -	$ -	$ -	$ 10,110,100
2008-09	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	$ 139,227	$ -	$ 139,227	$ -	$ -	$ -	$ 139,227
2008-09	Local Government Employee Relations	Ch. 901/00	298	$ 844,154	$ -	$ 844,154	$ -	$ -	$ -	$ 844,154
2008-09	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 669,845	$ -	$ 669,845	$ -	$ -	$ -	$ 669,845
2008-09	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 383,293	$ -	$ 383,293	$ -	$ -	$ -	$ 383,293
2008-09	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 3,794,562	$ -	$ 3,794,562	$ -	$ -	$ -	$ 3,794,562
2008-09	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	$ 40,980	$ -	$ 40,980	$ -	$ -	$ -	$ 40,980
2008-09	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	$ 17,862	$ -	$ 17,862	$ -	$ -	$ -	$ 17,862
2008-09	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 3,344,905	$ -	$ 3,344,905	$ -	$ -	$ -	$ 3,344,905
2008-09	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 2,749,480	$ -	$ 2,749,480	$ -	$ -	$ -	$ 2,749,480
2008-09	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 16,772,447	$ -	$ 16,772,447	$ -	$ -	$ -	$ 16,772,447
2008-09	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 64,851	$ -	$ 64,851	$ -	$ -	$ -	$ 64,851
2008-09	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 12,813,444	$ -	$ 12,813,444	$ -	$ -	$ -	$ 12,813,444
2008-09	Perinatal Services	Ch. 1603/90	124	$ 1,009,278	$ -	$ 1,009,278	$ -	$ -	$ -	$ 1,009,278
2008-09	Permanent Absent Voters	Ch. 1422/82	83	$ 1,813,889	$ 1,813,889	$ -	$ 29,513	$ -	$ 29,513	$ (29,513)
2008-09	Permanent Absent Voters II	Ch. 922/01	324	$ 191,573	$ -	$ 191,573	$ -	$ -	$ -	$ 191,573
2008-09	Photographic Record of Evidence	Ch. 875/85	215	$ 112,982	$ -	$ 112,982	$ -	$ -	$ -	$ 112,982
2008-09	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 142,458	$ -	$ 142,458	$ -	$ -	$ -	$ 142,458
2008-09	Postmortem Examinations: Unidentified Bodies, Human Remains	Ch. 284/00	255	$ 1,122	$ -	$ 1,122	$ -	$ -	$ -	$ 1,122

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2008-09	Search Warrant: AIDS	Ch. 1088/88	73	$ 706,871	$ -	$ 706,871	$ -	$ -	$ -	$ 706,871
2008-09	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 195,373	$ -	$ 195,373	$ -	$ -	$ -	$ 195,373
2008-09	Stolen Vehicle Notification	Ch. 337/90	120	$ 551,742	$ -	$ 551,742	$ -	$ -	$ -	$ 551,742
2008-09 Total				**$ 162,270,401**	**$ 32,505,880**	**$ 129,764,521**	**$ 1,446,315**	**$ 585,891**	**$ 860,424**	**$ 128,904,097**
2007-08	Absentee Ballots	Ch. 77/78	2	$ 22,557,828	$ 22,557,828	$ -	$ 103,885	$ 705	$ 103,180	$ (103,180)
2007-08	Administrative License Suspension	Ch.1460/89	246	$ 2,537,487	$ 2,537,487	$ -	$ 15,363	$ 4,574	$ 10,789	$ (10,789)
2007-08	Animal Adoption	Ch. 752/98	213	$ 20,630,891	$ -	$ 20,630,891	$ -	$ -	$ -	$ 20,630,891
2007-08	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 164,218	$ -	$ 164,218	$ -	$ -	$ -	$ 164,218
2007-08	Coroner's Costs	Ch. 498/77	88	$ 99,582	$ -	$ 99,582	$ -	$ -	$ -	$ 99,582
2007-08	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 15,655,373	$ -	$ 15,655,373	$ -	$ -	$ -	$ 15,655,373
2007-08	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 275,387	$ -	$ 275,387	$ -	$ -	$ -	$ 275,387
2007-08	Crime Victims' Rights	Ch. 411/95	158	$ 321,041	$ -	$ 321,041	$ -	$ -	$ -	$ 321,041
2007-08	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 593,232	$ -	$ 593,232	$ -	$ -	$ -	$ 593,232
2007-08	DNA Database	Ch. 822/00	266	$ 163,634	$ -	$ 163,634	$ -	$ -	$ -	$ 163,634
2007-08	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 7,589,735	$ 7,589,735	$ -	$ 17,895	$ 7,895	$ 10,000	$ (10,000)
2007-08	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	$ 1,238,574	$ 1,238,574	$ -	$ 120,918	$ 109,792	$ 11,126	$ (11,126)
2007-08	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,942,263	$ -	$ 1,942,263	$ -	$ -	$ -	$ 1,942,263
2007-08	False Reports of Police Misconduct	Ch. 590/95	257	$ 5,788	$ -	$ 5,788	$ -	$ -	$ -	$ 5,788
2007-08	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 146,000	$ -	$ 146,000	$ -	$ -	$ -	$ 146,000
2007-08	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 27,775	$ -	$ 27,775	$ -	$ -	$ -	$ 27,775
2007-08	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 6,058,218	$ -	$ 6,058,218	$ -	$ -	$ -	$ 6,058,218
2007-08	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	$ 76,180,806	$ 5,347,016	$ 70,833,790	$ -	$ -	$ -	$ 70,833,790
2007-08	Identity Theft	Ch. 956/00	321	$ 9,689,339	$ -	$ 9,689,339	$ -	$ -	$ -	$ 9,689,339
2007-08	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	$ 134,655	$ -	$ 134,655	$ -	$ -	$ -	$ 134,655
2007-08	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	$ 9,133	$ 5,761	$ 3,372	$ -	$ -	$ -	$ 3,372
2007-08	Local Government Employee Relations	Ch. 901/00	298	$ 1,622,631	$ -	$ 1,622,631	$ -	$ -	$ -	$ 1,622,631
2007-08	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 661,256	$ -	$ 661,256	$ -	$ -	$ -	$ 661,256
2007-08	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 681,608	$ -	$ 681,608	$ -	$ -	$ -	$ 681,608
2007-08	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 3,146,513	$ -	$ 3,146,513	$ -	$ -	$ -	$ 3,146,513
2007-08	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	$ 295,550	$ -	$ 295,550	$ -	$ -	$ -	$ 295,550
2007-08	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	$ 16,698	$ -	$ 16,698	$ -	$ -	$ -	$ 16,698
2007-08	Modified Primary Election	Ch. 898/00	323	$ 321,317	$ -	$ 321,317	$ -	$ -	$ -	$ 321,317
2007-08	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 4,934,428	$ -	$ 4,934,428	$ -	$ -	$ -	$ 4,934,428
2007-08	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 2,338,247	$ -	$ 2,338,247	$ -	$ -	$ -	$ 2,338,247
2007-08	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 16,500,776	$ -	$ 16,500,776	$ -	$ -	$ -	$ 16,500,776

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 277,610	$ -	$ 277,610	$ -	$ -	$ -	$ 277,610
2007-08	Peace Officers Cancer Presumption	Ch. 1171/89	118	$ 4,951,263	$ -	$ 4,951,263	$ -	$ -	$ -	$ 4,951,263
2007-08	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 9,354,360	$ -	$ 9,354,360	$ -	$ -	$ -	$ 9,354,360
2007-08	Perinatal Services	Ch. 1603/90	124	$ 1,280,819	$ -	$ 1,280,819	$ -	$ -	$ -	$ 1,280,819
2007-08	Permanent Absent Voters II	Ch. 922/01	324	$ 18,688	$ -	$ 18,688	$ -	$ -	$ -	$ 18,688
2007-08	Photographic Record of Evidence	Ch. 875/85	215	$ 163,955	$ -	$ 163,955	$ -	$ -	$ -	$ 163,955
2007-08	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 123,677	$ -	$ 123,677	$ -	$ -	$ -	$ 123,677
2007-08	Postmortem Examinations: Unidentified Bodies, Human Remains	Ch. 284/00	255	$ 4,338	$ -	$ 4,338	$ -	$ -	$ -	$ 4,338
2007-08	Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 361,730	$ 361,730	$ -	$ 12,360	$ 9,100	$ 3,260	$ (3,260)
2007-08	Search Warrant: AIDS	Ch. 1088/88	73	$ 841,064	$ -	$ 841,064	$ -	$ -	$ -	$ 841,064
2007-08	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 284,904	$ -	$ 284,904	$ -	$ -	$ -	$ 284,904
2007-08	Stolen Vehicle Notification	Ch. 337/90	120	$ 551,719	$ -	$ 551,719	$ -	$ -	$ -	$ 551,719
2007-08 Total				**$ 214,754,110**	**$ 39,638,131**	**$ 175,115,979**	**$ 270,421**	**$ 132,066**	**$ 138,355**	**$ 174,977,624**
2006-07	Absentee Ballots	Ch. 77/78	2	$ 19,646,473	$ 19,646,473	$ -	$ 1,879,295	$ 1,796,175	$ 83,120	$ (83,120)
2006-07	Animal Adoption	Ch. 752/98	213	$ 17,578,031	$ 17,578,031	$ -	$ 7,173,913	$ 3,196,190	$ 3,977,723	$ (3,977,723)
2006-07	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 14,699,081	$ -	$ 14,699,081	$ -	$ -	$ -	$ 14,699,081
2006-07	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 253,715	$ -	$ 253,715	$ -	$ -	$ -	$ 253,715
2006-07	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 7,245,327	$ 7,245,327	$ -	$ 511,677	$ 203,592	$ 308,085	$ (308,085)
2006-07	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,613,395	$ -	$ 1,613,395	$ -	$ -	$ -	$ 1,613,395
2006-07	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 99,516	$ -	$ 99,516	$ -	$ -	$ -	$ 99,516
2006-07	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 17,343	$ -	$ 17,343	$ -	$ -	$ -	$ 17,343
2006-07	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 4,916,471	$ 4,891,214	$ 25,257	$ 329,599	$ 96,754	$ 232,845	$ (207,588)
2006-07	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	$ 55,055,560	$ 45,839,884	$ 9,215,676	$ 810,809	$ 314,697	$ 496,112	$ 8,719,564
2006-07	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 911,198	$ 911,198	$ -	$ 63,389	$ 62,655	$ 734	$ (734)
2006-07	Identity Theft	Ch. 956/00	321	$ 8,195,588	$ -	$ 8,195,588	$ -	$ -	$ -	$ 8,195,588
2006-07	Local Government Employee Relations	Ch. 901/00	298	$ 1,494,135	$ -	$ 1,494,135	$ -	$ -	$ -	$ 1,494,135
2006-07	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 608,739	$ -	$ 608,739	$ -	$ -	$ -	$ 608,739
2006-07	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 649,974	$ -	$ 649,974	$ -	$ -	$ -	$ 649,974
2006-07	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 3,003,738	$ 2,950,498	$ 53,240	$ 341,376	$ 341,376	$ -	$ 53,240
2006-07	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 4,945,546	$ -	$ 4,945,546	$ -	$ -	$ -	$ 4,945,546
2006-07	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 1,707,977	$ 1,702,574	$ 5,403	$ 439,438	$ 439,438	$ -	$ 5,403
2006-07	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 15,737,180	$ -	$ 15,737,180	$ -	$ -	$ -	$ 15,737,180
2006-07	Peace Officers Cancer Presumption	Ch. 1171/89	118	$ 5,458,348	$ 5,346,969	$ 111,379	$ 499,658	$ 260,199	$ 239,459	$ (128,080)
2006-07	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 9,846,865	$ 7,917,464	$ 1,929,401	$ 10,543,101	$ 8,336,825	$ 2,206,276	$ (276,875)
2006-07	Permanent Absent Voters II	Ch. 922/01	324	$ 24,807	$ -	$ 24,807	$ -	$ -	$ -	$ 24,807
2006-07	Photographic Record of Evidence	Ch. 875/85	215	$ 309,808	$ 298,328	$ 11,480	$ 224,111	$ 123,080	$ 101,031	$ (89,551)
2006-07	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 359,305	$ 334,797	$ 24,508	$ -	$ -	$ -	$ 24,508

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Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2006-07	Postmortem Examinations: Unidentified Bodies, Human Remains	Ch. 284/00	255	$ 1,454	$ 1,454	$ -	$ 569,162	$ 98,026	$ 471,136	$ (471,136)
2006-07	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 273,468	$ 273,084	$ 384	$ 384	$ 384	$ -	$ 384
2006-07 Total				**$ 174,653,042**	**$ 114,937,295**	**$ 59,715,747**	**$ 23,385,912**	**$ 15,269,391**	**$ 8,116,521**	**$ 51,599,226**
2005-06	Animal Adoption	Ch. 752/98	213	$ 17,295,277	$ 17,295,277	$ -	$ 4,731,540	$ 2,180,604	$ 2,550,936	$ (2,550,936)
2005-06	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 14,208,617	$ -	$ 14,208,617	$ -	$ -	$ -	$ 14,208,617
2005-06	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 228,442	$ -	$ 228,442	$ -	$ -	$ -	$ 228,442
2005-06	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 6,667,418	$ 6,667,418	$ -	$ 275,973	$ 18,621	$ 257,352	$ (257,352)
2005-06	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,404,520	$ -	$ 1,404,520	$ -	$ -	$ -	$ 1,404,520
2005-06	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 74,994	$ -	$ 74,994	$ -	$ -	$ -	$ 74,994
2005-06	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 14,818	$ -	$ 14,818	$ -	$ -	$ -	$ 14,818
2005-06	Handicapped and Disabled Students	Ch. 1747/84	111	$ 47,584,774	$ 46,036,314	$ 1,548,460	$ 24,034,991	$ 16,222,065	$ 7,812,926	$ (6,264,466)
2005-06	Handicapped and Disabled Students II	Ch. 1128/94	263	$ 1,413,312	$ 241,607	$ 1,171,705	$ -	$ -	$ -	$ 1,171,705
2005-06	Identity Theft	Ch. 956/00	321	$ 6,606,055	$ -	$ 6,606,055	$ -	$ -	$ -	$ 6,606,055
2005-06	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	$ 202,633	$ 192,604	$ 10,029	$ -	$ -	$ -	$ 10,029
2005-06	Local Government Employee Relations	Ch. 901/00	298	$ 624,936	$ -	$ 624,936	$ -	$ -	$ -	$ 624,936
2005-06	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 520,454	$ -	$ 520,454	$ -	$ -	$ -	$ 520,454
2005-06	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 680,286	$ -	$ 680,286	$ -	$ -	$ -	$ 680,286
2005-06	Modified Primary Election	Ch. 898/00	323	$ 224,217	$ -	$ 224,217	$ -	$ -	$ -	$ 224,217
2005-06	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 4,426,491	$ -	$ 4,426,491	$ -	$ -	$ -	$ 4,426,491
2005-06	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 14,357,147	$ 400,803	$ 13,956,344	$ 187,248	$ 156,785	$ 30,463	$ 13,925,881
2005-06	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 13,310,225	$ 11,075,800	$ 2,234,425	$ 6,047,022	$ 5,925,563	$ 121,459	$ 2,112,966
2005-06	Permanent Absent Voters II	Ch. 922/01	324	$ 21,868	$ -	$ 21,868	$ -	$ -	$ -	$ 21,868
2005-06	Photographic Record of Evidence	Ch. 875/85	215	$ 292,557	$ 292,557	$ -	$ 215,089	$ 87,646	$ 127,443	$ (127,443)
2005-06	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 173,372	$ 134,566	$ 38,806	$ -	$ -	$ -	$ 38,806
2005-06	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 258,165	$ 258,032	$ 133	$ 133	$ 133	$ -	$ 133
2005-06 Total				**$ 130,590,578**	**$ 82,594,978**	**$ 47,995,600**	**$ 35,491,996**	**$ 24,591,417**	**$ 10,900,579**	**$ 37,095,021**
2004-05	Absentee Ballots	Ch. 77/78	2	$ 17,563,599	$ 17,516,451	$ 47,148	$ 2,316,857	$ 2,316,857	$ -	$ 47,148
2004-05	Animal Adoption	Ch. 752/98	213	$ 19,548,029	$ 19,548,029	$ -	$ 4,216,994	$ 2,830,732	$ 1,386,262	$ (1,386,262)
2004-05	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 13,916,033	$ -	$ 13,916,033	$ -	$ -	$ -	$ 13,916,033
2004-05	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 222,536	$ -	$ 222,536	$ -	$ -	$ -	$ 222,536
2004-05	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 6,141,561	$ 6,141,561	$ -	$ 1,110,167	$ 1,051,100	$ 59,067	$ (59,067)
2004-05	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,301,244	$ -	$ 1,301,244	$ -	$ -	$ -	$ 1,301,244
2004-05	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 83,670	$ -	$ 83,670	$ -	$ -	$ -	$ 83,670
2004-05	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 9,385	$ -	$ 9,385	$ -	$ -	$ -	$ 9,385
2004-05	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 2,985,232	$ 2,985,232	$ -	$ 862,921	$ 831,514	$ 31,407	$ (31,407)
2004-05	Handicapped and Disabled Students	Ch. 1747/84	111	$ 47,836,298	$ 45,841,083	$ 1,995,215	$ 24,694,055	$ 17,134,159	$ 7,559,896	$ (5,564,681)
2004-05	Handicapped and Disabled Students II	Ch. 1128/94	263	$ 122,653	$ -	$ 122,653	$ -	$ -	$ -	$ 122,653
2004-05	Identity Theft	Ch. 956/00	321	$ 6,015,442	$ -	$ 6,015,442	$ -	$ -	$ -	$ 6,015,442
2004-05	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	$ 9,603	$ 4,880	$ 4,723	$ -	$ -	$ -	$ 4,723
2004-05	Local Government Employee Relations	Ch. 901/00	298	$ 572,059	$ -	$ 572,059	$ -	$ -	$ -	$ 572,059

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Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2004-05	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 423,486	$ -	$ 423,486	$ -	$ -	$ -	$ 423,486
2004-05	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 427,477	$ -	$ 427,477	$ -	$ -	$ -	$ 427,477
2004-05	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 4,377,858	$ -	$ 4,377,858	$ -	$ -	$ -	$ 4,377,858
2004-05	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 14,798,506	$ 14,438,448	$ 360,058	$ 1,690,642	$ 1,688,023	$ 2,619	$ 357,439
2004-05	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 13,187,078	$ -	$ 13,187,078	$ -	$ -	$ -	$ 13,187,078
2004-05	Permanent Absent Voters II	Ch. 922/01	324	$ 24,382	$ -	$ 24,382	$ -	$ -	$ -	$ 24,382
2004-05	Photographic Record of Evidence	Ch. 875/85	215	$ 340,151	$ 340,151	$ -	$ 381,207	$ 225,914	$ 155,293	$ (155,293)
2004-05	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 31,183	$ 17,053	$ 14,130	$ -	$ -	$ -	$ 14,130
2004-05	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	$ 126,355	$ -	$ 126,355	$ -	$ -	$ -	$ 126,355
2004-05 Total				**$ 150,063,820**	**$ 106,832,888**	**$ 43,230,932**	**$ 35,272,843**	**$ 26,078,299**	**$ 9,194,544**	**$ 34,036,388**
2003-04	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 12,995,063	$ -	$ 12,995,063	$ -	$ -	$ -	$ 12,995,063
2003-04	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 198,432	$ -	$ 198,432	$ -	$ -	$ -	$ 198,432
2003-04	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,445,585	$ -	$ 1,445,585	$ -	$ -	$ -	$ 1,445,585
2003-04	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 69,168	$ -	$ 69,168	$ -	$ -	$ -	$ 69,168
2003-04	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 10,431	$ -	$ 10,431	$ -	$ -	$ -	$ 10,431
2003-04	Handicapped and Disabled Students II	Ch. 1128/94	263	$ 1,183,695	$ -	$ 1,183,695	$ -	$ -	$ -	$ 1,183,695
2003-04	Identity Theft	Ch. 956/00	321	$ 4,922,194	$ -	$ 4,922,194	$ -	$ -	$ -	$ 4,922,194
2003-04	In-Home Support Services II	Ch. 90/99	289	$ 11,904	$ -	$ 11,904	$ -	$ -	$ -	$ 11,904
2003-04	Local Government Employee Relations	Ch. 901/00	298	$ 278,272	$ -	$ 278,272	$ -	$ -	$ -	$ 278,272
2003-04	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 389,996	$ -	$ 389,996	$ -	$ -	$ -	$ 389,996
2003-04	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 446,868	$ -	$ 446,868	$ -	$ -	$ -	$ 446,868
2003-04	Modified Primary Election	Ch. 898/00	323	$ 138,065	$ -	$ 138,065	$ -	$ -	$ -	$ 138,065
2003-04	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 4,166,048	$ -	$ 4,166,048	$ -	$ -	$ -	$ 4,166,048
2003-04	Permanent Absent Voters II	Ch. 922/01	324	$ 14,834	$ -	$ 14,834	$ -	$ -	$ -	$ 14,834
2003-04	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 148,711	$ 124,059	$ 24,652	$ -	$ -	$ -	$ 24,652
2003-04	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	$ 6,650,521	$ -	$ 6,650,521	$ -	$ -	$ -	$ 6,650,521
2003-04 Total				**$ 33,069,787**	**$ 124,059**	**$ 32,945,728**	**$ -**	**$ -**	**$ -**	**$ 32,945,728**
2002-03	Binding Arbitration	Ch. 906/00	284	$ 122,267	$ -	$ 122,267	$ -	$ -	$ -	$ 122,267
2002-03	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 12,146,890	$ -	$ 12,146,890	$ -	$ -	$ -	$ 12,146,890
2002-03	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 159,800	$ -	$ 159,800	$ -	$ -	$ -	$ 159,800
2002-03	Domestic Violence Background Checks	Ch. 713/01	322	$ 1,482,019	$ -	$ 1,482,019	$ -	$ -	$ -	$ 1,482,019
2002-03	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 59,501	$ -	$ 59,501	$ -	$ -	$ -	$ 59,501
2002-03	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 12,410	$ -	$ 12,410	$ -	$ -	$ -	$ 12,410
2002-03	Handicapped and Disabled Students II	Ch. 1128/94	263	$ 2,958,677	$ -	$ 2,958,677	$ -	$ -	$ -	$ 2,958,677
2002-03	Identity Theft	Ch. 956/00	321	$ 4,322,291	$ -	$ 4,322,291	$ -	$ -	$ -	$ 4,322,291
2002-03	In-Home Support Services II	Ch. 90/99	289	$ 132,994	$ -	$ 132,994	$ -	$ -	$ -	$ 132,994
2002-03	Local Government Employee Relations	Ch. 901/00	298	$ 217,798	$ -	$ 217,798	$ -	$ -	$ -	$ 217,798
2002-03	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 397,782	$ -	$ 397,782	$ -	$ -	$ -	$ 397,782

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				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2002-03	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 821,319	$ -	$ 821,319	$ -	$ -	$ -	$ 821,319
2002-03	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	$ 3,642,082	$ -	$ 3,642,082	$ -	$ -	$ -	$ 3,642,082
2002-03	Permanent Absent Voters II	Ch. 922/01	324	$ 9,310	$ -	$ 9,310	$ -	$ -	$ -	$ 9,310
2002-03	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 135,482	$ 112,687	$ 22,795	$ -	$ -	$ -	$ 22,795
2002-03	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	$ 3,008,618	$ -	$ 3,008,618	$ -	$ -	$ -	$ 3,008,618
2002-03 Total				**$ 29,629,240**	**$ 112,687**	**$ 29,516,553**	**$ -**	**$ -**	**$ -**	**$ 29,516,553**
2001-02	Binding Arbitration	Ch. 906/00	284	$ 169,704	$ -	$ 169,704	$ -	$ -	$ -	$ 169,704
2001-02	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	$ 11,348,947	$ -	$ 11,348,947	$ -	$ -	$ -	$ 11,348,947
2001-02	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	$ 51,990	$ -	$ 51,990	$ -	$ -	$ -	$ 51,990
2001-02	Domestic Violence Background Checks	Ch. 713/01	322	$ 583,468	$ -	$ 583,468	$ -	$ -	$ -	$ 583,468
2001-02	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 75,056	$ -	$ 75,056	$ -	$ -	$ -	$ 75,056
2001-02	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 15,208	$ -	$ 15,208	$ -	$ -	$ -	$ 15,208
2001-02	Handicapped and Disabled Students II	Ch. 1128/94	263	$ 2,343,422	$ -	$ 2,343,422	$ -	$ -	$ -	$ 2,343,422
2001-02	In-Home Support Services II	Ch. 90/99	289	$ 116,534	$ -	$ 116,534	$ -	$ -	$ -	$ 116,534
2001-02	Local Government Employee Relations	Ch. 901/00	298	$ 189,785	$ -	$ 189,785	$ -	$ -	$ -	$ 189,785
2001-02	Local Recreational Areas: Background Screenings	Ch. 777/01	285	$ 171,461	$ -	$ 171,461	$ -	$ -	$ -	$ 171,461
2001-02	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 565,634	$ -	$ 565,634	$ -	$ -	$ -	$ 565,634
2001-02	Modified Primary Election	Ch. 898/00	323	$ 32,181	$ -	$ 32,181	$ -	$ -	$ -	$ 32,181
2001-02	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	$ 73,775	$ 62,375	$ 11,400	$ -	$ -	$ -	$ 11,400
2001-02	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	$ 70,053	$ -	$ 70,053	$ -	$ -	$ -	$ 70,053
2001-02 Total				**$ 15,807,218**	**$ 62,375**	**$ 15,744,843**	**$ -**	**$ -**	**$ -**	**$ 15,744,843**
2000-01	Binding Arbitration	Ch. 906/00	284	$ 36,299	$ -	$ 36,299	$ -	$ -	$ -	$ 36,299
2000-01	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	$ 56,002	$ -	$ 56,002	$ -	$ -	$ -	$ 56,002
2000-01	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	$ 13,248	$ -	$ 13,248	$ -	$ -	$ -	$ 13,248
2000-01	In-Home Support Services II	Ch. 90/99	289	$ 112,301	$ -	$ 112,301	$ -	$ -	$ -	$ 112,301
2000-01	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	$ 235,446	$ -	$ 235,446	$ -	$ -	$ -	$ 235,446
2000-01	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	$ 4,292	$ -	$ 4,292	$ -	$ -	$ -	$ 4,292
2000-01 Total				**$ 457,588**	**$ -**	**$ 457,588**	**$ -**	**$ -**	**$ -**	**$ 457,588**
1999-00	In-Home Support Services II	Ch. 90/99	289	$ 32,985	$ -	$ 32,985	$ -	$ -	$ -	$ 32,985
1999-00 Total				**$ 32,985**	**$ -**	**$ 32,985**	**$ -**	**$ -**	**$ -**	**$ 32,985**
1998-99	Open Meetings Act	Ch. 641/86	49	$ 5,866,046	$ 5,866,046	$ -	$ 120,751	$ 119,988	$ 763	$ (763)
1998-99 Total				**$ 5,866,046**	**$ 5,866,046**	**$ -**	**$ 120,751**	**$ 119,988**	**$ 763**	**$ (763)**
1997-98	Open Meetings Act	Ch. 641/86	49	$ 4,707,412	$ 4,707,412	$ -	$ 183,902	$ 183,169	$ 733	$ (733)
1997-98 Total				**$ 4,707,412**	**$ 4,707,412**	**$ -**	**$ 183,902**	**$ 183,169**	**$ 733**	**$ (733)**
1995-96	Open Meetings Act	Ch. 641/86	49	$ 3,690,222	$ 3,690,222	$ -	$ 870,559	$ 867,771	$ 2,788	$ (2,788)
1995-96 Total				**$ 3,690,222**	**$ 3,690,222**	**$ -**	**$ 870,559**	**$ 867,771**	**$ 2,788**	**$ (2,788)**
1992-93	Open Meetings Act	Ch. 641/86	49	$ 4,970,992	$ 4,970,992	$ -	$ 713	$ -	$ 713	$ (713)
1992-93 Total				**$ 4,970,992**	**$ 4,970,992**	**$ -**	**$ 713**	**$ -**	**$ 713**	**$ (713)**
1991-92	California Fire Incident Reporting System (CFIRS)	Ch. 445/00, 345/87	288	$ 130,288	$ -	$ 130,288	$ -	$ -	$ -	$ 130,288

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs by Fiscal Year 2010-11 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1991-92	Open Meetings Act	Ch. 641/86	49	$ 5,350,067	$ 5,350,067	$ -	$ 48,328	$ 46,542	$ 1,786	$ (1,786)
1991-92 Total				**$ 5,480,355**	**$ 5,350,067**	**$ 130,288**	**$ 48,328**	**$ 46,542**	**$ 1,786**	**$ 128,502**
1990-91	California Fire Incident Reporting System (CFIRS)	Ch. 445/00, 345/87	288	$ 85,888	$ -	$ 85,888	$ -	$ -	$ -	$ 85,888
1990-91 Total				**$ 85,888**	**$ -**	**$ 85,888**	**$ -**	**$ -**	**$ -**	**$ 85,888**
Grand Total				**$ 1,294,248,596**	**$ 427,684,313**	**$ 866,564,283**	**$ 97,168,039**	**$ 67,908,815**	**$ 29,259,224**	**$ 837,305,059**

Schedule B2:
Local Agencies
for 15-year Payment
Pursuant to Proposition 1A

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs by Fiscal Year 2003-04 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2003-04	Absentee Ballots	Ch. 77/78	2	$ 18,909,670	$ -	$ 18,909,670	$ -	$ -	$ -	$ 18,909,670
2003-04	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 20,545	$ -	$ 20,545	$ -	$ -	$ -	$ 20,545
2003-04	Allocation of Property Tax Revenues	Ch. 697/92	152	$ 362,165	$ -	$ 362,165	$ -	$ -	$ -	$ 362,165
2003-04	Child Abduction and Recovery	Ch. 1399/76	13	$ 12,782,459	$ -	$ 12,782,459	$ -	$ -	$ -	$ 12,782,459
2003-04	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 136,462	$ -	$ 136,462	$ -	$ -	$ -	$ 136,462
2003-04	Coroner's Costs	Ch. 498/77	88	$ 83,566	$ -	$ 83,566	$ -	$ -	$ -	$ 83,566
2003-04	Countywide Tax Rates	Ch. 921/87	90	$ 151,074	$ -	$ 151,074	$ -	$ -	$ -	$ 151,074
2003-04	Crime Victims' Rights	Ch. 411/95	158	$ 228,501	$ -	$ 228,501	$ -	$ -	$ -	$ 228,501
2003-04	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 308,674	$ -	$ 308,674	$ -	$ -	$ -	$ 308,674
2003-04	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 5,949,677	$ -	$ 5,949,677	$ -	$ -	$ -	$ 5,949,677
2003-04	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,194,518	$ -	$ 2,194,518	$ -	$ -	$ -	$ 2,194,518
2003-04	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 2,840,984	$ -	$ 2,840,984	$ -	$ -	$ -	$ 2,840,984
2003-04	Grand Jury Proceedings	Ch. 1170/96	227	$ 2,781,851	$ -	$ 2,781,851	$ -	$ -	$ -	$ 2,781,851
2003-04	Handicapped and Disabled Students	Ch. 1747/84	111	$ 39,674,557	$ -	$ 39,674,557	$ -	$ -	$ -	$ 39,674,557
2003-04	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 384,774	$ -	$ 384,774	$ -	$ -	$ -	$ 384,774
2003-04	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	$ 137,059	$ -	$ 137,059	$ -	$ -	$ -	$ 137,059
2003-04	Mandate Reimbursement Process	Ch. 486/75	41	$ 5,944,315	$ -	$ 5,944,315	$ -	$ -	$ -	$ 5,944,315
2003-04	Medi-Cal Beneficiary Probate	Ch. 102/81	43	$ 19,422	$ -	$ 19,422	$ -	$ -	$ -	$ 19,422
2003-04	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 1,976,735	$ -	$ 1,976,735	$ -	$ -	$ -	$ 1,976,735
2003-04	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	$ 40,675	$ -	$ 40,675	$ -	$ -	$ -	$ 40,675
2003-04	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	$ 14,010	$ -	$ 14,010	$ -	$ -	$ -	$ 14,010
2003-04	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 1,860,553	$ -	$ 1,860,553	$ -	$ -	$ -	$ 1,860,553
2003-04	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 13,588,862	$ -	$ 13,588,862	$ -	$ -	$ -	$ 13,588,862
2003-04	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 256,296	$ -	$ 256,296	$ -	$ -	$ -	$ 256,296
2003-04	Peace Officers Cancer Presumption	Ch. 1171/89	118	$ 1,860,505	$ -	$ 1,860,505	$ -	$ -	$ -	$ 1,860,505
2003-04	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 9,674,908	$ -	$ 9,674,908	$ -	$ -	$ -	$ 9,674,908
2003-04	Perinatal Services	Ch. 1603/90	124	$ 1,002,334	$ -	$ 1,002,334	$ -	$ -	$ -	$ 1,002,334
2003-04	Permanent Absent Voters	Ch. 1422/82	83	$ 2,923,144	$ -	$ 2,923,144	$ -	$ -	$ -	$ 2,923,144
2003-04	Photographic Record of Evidence	Ch. 875/85	215	$ 410,002	$ -	$ 410,002	$ -	$ -	$ -	$ 410,002
2003-04	Presidential Primaries 2000	Ch. 18/99	222	$ 170,703	$ -	$ 170,703	$ -	$ -	$ -	$ 170,703
2003-04	Prisoner Parental Rights	Ch. 820/91	128	$ 2,905,875	$ -	$ 2,905,875	$ -	$ -	$ -	$ 2,905,875
2003-04	Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 277,627	$ -	$ 277,627	$ -	$ -	$ -	$ 277,627
2003-04	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	$ 13,075	$ -	$ 13,075	$ -	$ -	$ -	$ 13,075
2003-04	Regional Housing Need Determination	Ch. 1143/80	55	$ 2,181,855	$ -	$ 2,181,855	$ -	$ -	$ -	$ 2,181,855
2003-04	Search Warrant: AIDS	Ch. 1088/88	73	$ 1,508,402	$ -	$ 1,508,402	$ -	$ -	$ -	$ 1,508,402
2003-04	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 238,077	$ -	$ 238,077	$ -	$ -	$ -	$ 238,077
2003-04	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 16,135,367	$ -	$ 16,135,367	$ -	$ -	$ -	$ 16,135,367
2003-04	Sexually Violent Predators	Ch. 762/95	175	$ 11,614,420	$ -	$ 11,614,420	$ -	$ -	$ -	$ 11,614,420
2003-04	Voter Registration Procedures	Ch. 704/75	56	$ 1,608,634	$ -	$ 1,608,634	$ -	$ -	$ -	$ 1,608,634

State Mandated Programs for Fiscal Year 2003-04 and Prior Years
Schedule B2: Local Agencies for 15-year Payment Plan Pursuant to Proposition 1A
Proposition 1A specifies that all claims must be paid by fiscal year 2020-21

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs by Fiscal Year 2003-04 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2003-04 Total				**$ 163,172,332**	**$ -**	**$ 163,172,332**	**$ -**	**$ -**	**$ -**	**$ 163,172,332**
2002-03	Absentee Ballots	Ch. 77/78	2	$ 11,979,511	$ -	$ 11,979,511	$ -	$ -	$ -	$ 11,979,511
2002-03	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 7,652	$ -	$ 7,652	$ -	$ -	$ -	$ 7,652
2002-03	AIDS Testing	Ch. 1597/88	1	$ 784,083	$ 983	$ 783,100	$ 17	$ 17	$ -	$ 783,100
2002-03	Allocation of Property Tax Revenues	Ch. 697/92	152	$ 298,804	$ -	$ 298,804	$ -	$ -	$ -	$ 298,804
2002-03	Animal Adoption	Ch. 752/98	213	$ 14,665,349	$ -	$ 14,665,349	$ -	$ -	$ -	$ 14,665,349
2002-03	Child Abduction and Recovery	Ch. 1399/76	13	$ 15,960,547	$ 999	$ 15,959,548	$ -	$ -	$ -	$ 15,959,548
2002-03	Child Abuse Treatment Services Authorization and Case Management	Ch. 1090/96	196	$ 254,775	$ -	$ 254,775	$ -	$ -	$ -	$ 254,775
2002-03	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 128,317	$ 1,000	$ 127,317	$ -	$ -	$ -	$ 127,317
2002-03	Coroner's Costs	Ch. 498/77	88	$ 79,570	$ 1,000	$ 78,570	$ -	$ -	$ -	$ 78,570
2002-03	County Treasury Oversight Committee	Ch. 784/95	207	$ 427,179	$ -	$ 427,179	$ -	$ -	$ -	$ 427,179
2002-03	Countywide Tax Rates	Ch. 921/87	90	$ 180,073	$ 871	$ 179,202	$ 129	$ 129	$ -	$ 179,202
2002-03	Crime Victims' Rights	Ch. 411/95	158	$ 403,295	$ 975	$ 402,320	$ 25	$ 25	$ -	$ 402,320
2002-03	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 335,776	$ 995	$ 334,781	$ 5	$ 5	$ -	$ 334,781
2002-03	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 5,979,253	$ 945	$ 5,978,308	$ 34	$ 34	$ -	$ 5,978,308
2002-03	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,504,720	$ 999	$ 2,503,721	$ 1	$ 1	$ -	$ 2,503,721
2002-03	Elder Abuse Training	Ch. 444/97	205	$ 22,714	$ -	$ 22,714	$ -	$ -	$ -	$ 22,714
2002-03	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 3,729,935	$ 993	$ 3,728,942	$ 7	$ 7	$ -	$ 3,728,942
2002-03	Grand Jury Proceedings	Ch. 1170/96	227	$ 2,066,250	$ -	$ 2,066,250	$ -	$ -	$ -	$ 2,066,250
2002-03	Handicapped and Disabled Students	Ch. 1747/84	111	$ 121,706,750	$ 1,000	$ 121,705,750	$ -	$ -	$ -	$ 121,705,750
2002-03	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 323,124	$ -	$ 323,124	$ -	$ -	$ -	$ 323,124
2002-03	Investment Reports	Ch. 783/95	161	$ 5,354,628	$ 841	$ 5,353,787	$ 138	$ 133	$ 5	$ 5,353,782
2002-03	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	$ 66,009	$ 1,000	$ 65,009	$ -	$ -	$ -	$ 65,009
2002-03	Mandate Reimbursement Process	Ch. 486/75	41	$ 6,660,335	$ 933	$ 6,659,402	$ 47	$ 47	$ -	$ 6,659,402
2002-03	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 1,909,524	$ -	$ 1,909,524	$ -	$ -	$ -	$ 1,909,524
2002-03	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	$ 95,696	$ 989	$ 94,707	$ 11	$ 11	$ -	$ 94,707
2002-03	Misdemeanors: Booking and Fingerprinting	Ch. 1105/92	138	$ 2,723,511	$ -	$ 2,723,511	$ -	$ -	$ -	$ 2,723,511
2002-03	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 1,566,598	$ -	$ 1,566,598	$ -	$ -	$ -	$ 1,566,598
2002-03	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 13,055,944	$ 2,199,511	$ 10,856,433	$ 15,792	$ 15,792	$ -	$ 10,856,433
2002-03	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 206,052	$ 774	$ 205,278	$ 226	$ 226	$ -	$ 205,278
2002-03	Peace Officers Cancer Presumption	Ch. 1171/89	118	$ 1,290,053	$ 997	$ 1,289,056	$ 3	$ 3	$ -	$ 1,289,056
2002-03	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 15,747,770	$ 915	$ 15,746,855	$ 78	$ 78	$ -	$ 15,746,855
2002-03	Perinatal Services	Ch. 1603/90	124	$ 1,111,542	$ 498	$ 1,111,044	$ 501	$ 501	$ -	$ 1,111,044
2002-03	Permanent Absent Voters	Ch. 1422/82	83	$ 1,749,664	$ -	$ 1,749,664	$ -	$ -	$ -	$ 1,749,664
2002-03	Photographic Record of Evidence	Ch. 875/85	215	$ 241,133	$ -	$ 241,133	$ -	$ -	$ -	$ 241,133
2002-03	Prisoner Parental Rights	Ch. 820/91	128	$ 2,790,600	$ 999	$ 2,789,601	$ 1	$ 1	$ -	$ 2,789,601
2002-03	Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 255,024	$ -	$ 255,024	$ -	$ -	$ -	$ 255,024
2002-03	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	$ 8,394	$ -	$ 8,394	$ -	$ -	$ -	$ 8,394
2002-03	Regional Housing Need Determination	Ch. 1143/80	55	$ 3,242,842	$ -	$ 3,242,842	$ -	$ -	$ -	$ 3,242,842

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs by Fiscal Year 2003-04 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2002-03	Search Warrant: AIDS	Ch. 1088/88	73	$ 1,310,317	$ 996	$ 1,309,321	$ 4	$ 4	$ -	$ 1,309,321
2002-03	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	$ 230,252	$ 997	$ 229,255	$ 3	$ 3	$ -	$ 229,255
2002-03	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 21,030,595	$ 992	$ 21,029,603	$ 8	$ 8	$ -	$ 21,029,603
2002-03	Sex Crime Confidentiality	Ch. 502/92	220	$ 803,497	$ -	$ 803,497	$ -	$ -	$ -	$ 803,497
2002-03	Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)	Ch. 908/96, 909/96	217	$ 3,960,523	$ -	$ 3,960,523	$ -	$ -	$ -	$ 3,960,523
2002-03	Sexually Violent Predators	Ch. 762/95	175	$ 11,865,771	$ -	$ 11,865,771	$ -	$ -	$ -	$ 11,865,771
2002-03	SIDS Training for Firefighters	Ch. 1111/89	180	$ 63,176	$ -	$ 63,176	$ -	$ -	$ -	$ 63,176
2002-03	SIDS: Autopsy Protocols	Ch. 955/89	110	$ 629,852	$ 951	$ 628,901	$ 49	$ 49	$ -	$ 628,901
2002-03	SIDS: Contact By Local Health Officers	Ch. 268/91	125	$ 395,547	$ 973	$ 394,574	$ 27	$ 27	$ -	$ 394,574
2002-03	Stolen Vehicle Notification	Ch. 337/90	120	$ 511,645	$ 909	$ 510,736	$ 91	$ 91	$ -	$ 510,736
2002-03	Very High Fire Hazard Severity Zones	Ch. 1188/92	181	$ 177,184	$ -	$ 177,184	$ -	$ -	$ -	$ 177,184
2002-03	Voter Registration Procedures	Ch. 704/75	56	$ 928,546	$ -	$ 928,546	$ -	$ -	$ -	$ 928,546
2002-03 Total				**$ 281,819,901**	**$ 2,224,035**	**$ 279,595,866**	**$ 17,197**	**$ 17,192**	**$ 5**	**$ 279,595,861**
2001-02	Absentee Ballots	Ch. 77/78	2	$ 11,238,372	$ 5,873,491	$ 5,364,881	$ 433,509	$ 433,509	$ -	$ 5,364,881
2001-02	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 8,252	$ -	$ 8,252	$ -	$ -	$ -	$ 8,252
2001-02	Allocation of Property Tax Revenues	Ch. 697/92	152	$ 265,607	$ 197,866	$ 67,741	$ 87,456	$ 87,456	$ -	$ 67,741
2001-02	Animal Adoption	Ch. 752/98	213	$ 15,364,538	$ -	$ 15,364,538	$ -	$ -	$ -	$ 15,364,538
2001-02	Child Abduction and Recovery	Ch. 1399/76	13	$ 15,813,649	$ 12,329,063	$ 3,484,586	$ 1,269,937	$ 1,269,937	$ -	$ 3,484,586
2001-02	Child Abuse Treatment Services Authorization and Case Management	Ch. 1090/96	196	$ 223,267	$ -	$ 223,267	$ -	$ -	$ -	$ 223,267
2001-02	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	$ 131,924	$ 103,000	$ 28,924	$ 20,511	$ 20,511	$ -	$ 28,924
2001-02	County Treasury Oversight Committee	Ch. 784/95	207	$ 399,060	$ -	$ 399,060	$ -	$ -	$ -	$ 399,060
2001-02	Countywide Tax Rates	Ch. 921/87	90	$ 105,665	$ 70,603	$ 35,062	$ 5,710	$ 5,710	$ -	$ 35,062
2001-02	Crime Victims' Rights	Ch. 411/95	158	$ 250,837	$ 185,110	$ 65,727	$ 26,415	$ 26,415	$ -	$ 65,727
2001-02	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	$ 339,466	$ 189,000	$ 150,466	$ -	$ -	$ -	$ 150,466
2001-02	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	$ 6,322,585	$ 4,127,820	$ 2,194,765	$ 247,050	$ 247,050	$ -	$ 2,194,765
2001-02	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,451,185	$ 955,823	$ 1,495,362	$ 48,177	$ 48,177	$ -	$ 1,495,362
2001-02	Elder Abuse Training	Ch. 444/97	205	$ 66,641	$ -	$ 66,641	$ -	$ -	$ -	$ 66,641
2001-02	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 3,022,743	$ 291,927	$ 2,730,816	$ 6,927	$ 6,927	$ -	$ 2,730,816
2001-02	Grand Jury Proceedings	Ch. 1170/96	227	$ 1,843,088	$ -	$ 1,843,088	$ -	$ -	$ -	$ 1,843,088
2001-02	Handicapped and Disabled Students	Ch. 1747/84	111	$ 101,247,740	$ 46,876,924	$ 54,370,816	$ 67,076	$ 67,076	$ -	$ 54,370,816
2001-02	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	$ 360,814	$ -	$ 360,814	$ -	$ -	$ -	$ 360,814
2001-02	Investment Reports	Ch. 783/95	161	$ 6,155,995	$ 3,234,817	$ 2,921,178	$ 214,181	$ 211,632	$ 2,549	$ 2,918,629
2001-02	Mandate Reimbursement Process	Ch. 486/75	41	$ 7,439,972	$ 3,039,628	$ 4,400,344	$ 79,707	$ 79,707	$ -	$ 4,400,344
2001-02	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	$ 1,686,347	$ -	$ 1,686,347	$ -	$ -	$ -	$ 1,686,347
2001-02	Misdemeanors: Booking and Fingerprinting	Ch. 1105/92	138	$ 2,254,752	$ 343,177	$ 1,911,575	$ 678,810	$ 678,810	$ -	$ 1,911,575
2001-02	Not Guilty by Reason of Insanity	Ch. 1114/79	200	$ 1,414,676	$ 291,657	$ 1,123,019	$ 16,343	$ 16,343	$ -	$ 1,123,019
2001-02	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 13,790,702	$ 2,865,951	$ 10,924,751	$ 66,087	$ 66,087	$ -	$ 10,924,751
2001-02	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	$ 183,179	$ 51,474	$ 131,705	$ 18,661	$ 18,661	$ -	$ 131,705
2001-02	Peace Officers Cancer Presumption	Ch. 1171/89	118	$ 2,090,618	$ 562,261	$ 1,528,357	$ 29,457	$ 29,457	$ -	$ 1,528,357
2001-02	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 14,448,269	$ -	$ 14,448,269	$ -	$ -	$ -	$ 14,448,269

State Controller's Office
Division of Accounting and Reporting
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Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2001-02	Perinatal Services	Ch. 1603/90	124	$ 970,340	$ 727,025	$ 243,315	$ 1,208,147	$ 1,208,147	$ -	$ 243,315
2001-02	Permanent Absent Voters	Ch. 1422/82	83	$ 1,203,466	$ 327,388	$ 876,078	$ 7,612	$ 7,612	$ -	$ 876,078
2001-02	Photographic Record of Evidence	Ch. 875/85	215	$ 440,624	$ -	$ 440,624	$ -	$ -	$ -	$ 440,624
2001-02	Prisoner Parental Rights	Ch. 820/91	128	$ 2,254,996	$ 1,176,944	$ 1,078,052	$ 186,548	$ 186,548	$ -	$ 1,078,052
2001-02	Rape Victim Counseling Center Notices	Ch. 999/91	127	$ 288,849	$ 127,255	$ 161,594	$ 30,632	$ 30,632	$ -	$ 161,594
2001-02	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	$ 8,212	$ -	$ 8,212	$ -	$ -	$ -	$ 8,212
2001-02	Regional Housing Need Determination	Ch. 1143/80	55	$ 4,276,504	$ 735,764	$ 3,540,740	$ 114,232	$ 114,232	$ -	$ 3,540,740
2001-02	Search Warrant: AIDS	Ch. 1088/88	73	$ 1,194,438	$ 839,862	$ 354,576	$ 88,138	$ 88,138	$ -	$ 354,576
2001-02	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 15,007,547	$ -	$ 15,007,547	$ -	$ -	$ -	$ 15,007,547
2001-02	Sex Crime Confidentiality	Ch. 502/92	220	$ 779,209	$ -	$ 779,209	$ -	$ -	$ -	$ 779,209
2001-02	Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)	Ch. 908/96, 909/96	217	$ 5,741,239	$ -	$ 5,741,239	$ -	$ -	$ -	$ 5,741,239
2001-02	Sexually Violent Predators	Ch. 762/95	175	$ 10,074,813	$ 4,186,774	$ 5,888,039	$ 10,225	$ 10,225	$ -	$ 5,888,039
2001-02	SIDS Training for Firefighters	Ch. 1111/89	180	$ 105,056	$ 32,152	$ 72,904	$ 4,175	$ 4,175	$ -	$ 72,904
2001-02	SIDS: Autopsy Protocols	Ch. 955/89	110	$ 845,703	$ 496,206	$ 349,497	$ 12,560	$ 12,560	$ -	$ 349,497
2001-02	SIDS: Contact By Local Health Officers	Ch. 268/91	125	$ 441,364	$ 243,856	$ 197,508	$ 27,451	$ 27,451	$ -	$ 197,508
2001-02	Stolen Vehicle Notification	Ch. 337/90	120	$ 459,916	$ 213,009	$ 246,907	$ 43,206	$ 43,206	$ -	$ 246,907
2001-02	Very High Fire Hazard Severity Zones	Ch. 1188/92	181	$ 97,093	$ 40,941	$ 56,152	$ 2,132	$ 2,132	$ -	$ 56,152
2001-02	Voter Registration Procedures	Ch. 704/75	56	$ 778,351	$ -	$ 778,351	$ -	$ -	$ -	$ 778,351
2001-02 Total				**$ 253,887,663**	**$ 90,736,768**	**$ 163,150,895**	**$ 5,051,072**	**$ 5,048,523**	**$ 2,549**	**$ 163,148,346**
2000-01	Animal Adoption	Ch. 752/98	213	$ 14,251,637	$ 14,251,637	$ -	$ 3,593,852	$ 1,009,521	$ 2,584,331	$ (2,584,331)
2000-01	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,252,430	$ 2,215,840	$ 36,590	$ 383,170	$ 383,170	$ -	$ 36,590
2000-01	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 1,250,611	$ 1,250,611	$ -	$ 512,013	$ 427,707	$ 84,306	$ (84,306)
2000-01	Grand Jury Proceedings	Ch. 1170/96	227	$ 1,812,095	$ 1,804,629	$ 7,466	$ -	$ -	$ -	$ 7,466
2000-01	Handicapped and Disabled Students	Ch. 1747/84	111	$ 68,191,228	$ 37,167,984	$ 31,023,244	$ 3,793,011	$ 3,793,011	$ -	$ 31,023,244
2000-01	Open Meetings Act II	Ch. 641/86	202	$ 14,995,599	$ 14,994,266	$ 1,333	$ 1,106,187	$ 1,106,173	$ 14	$ 1,319
2000-01	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	$ 689,947	$ 689,947	$ -	$ 7,574	$ 3,657	$ 3,917	$ (3,917)
2000-01	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 14,671,757	$ 2,787,000	$ 11,884,757	$ 5,245,281	$ 1,653,468	$ 3,591,813	$ 8,292,944
2000-01	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 9,999,179	$ 248,697	$ 9,750,482	$ 614	$ 614	$ -	$ 9,750,482
2000-01	Sexually Violent Predators	Ch. 762/95	175	$ 8,540,313	$ 8,379,743	$ 160,570	$ 510,604	$ 510,604	$ -	$ 160,570
2000-01 Total				**$ 136,654,796**	**$ 83,790,354**	**$ 52,864,442**	**$ 15,152,306**	**$ 8,887,925**	**$ 6,264,381**	**$ 46,600,061**
1999-00	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	$ 28,513	$ 23,714	$ 4,799	$ -	$ -	$ -	$ 4,799
1999-00	Animal Adoption	Ch. 752/98	213	$ 13,567,069	$ 13,566,554	$ 515	$ 3,522,285	$ 1,749,440	$ 1,772,845	$ (1,772,330)
1999-00	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 2,061,037	$ 2,023,558	$ 37,479	$ 587,701	$ 587,701	$ -	$ 37,479
1999-00	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 1,091,963	$ 1,091,963	$ -	$ 136,139	$ 104,705	$ 31,434	$ (31,434)
1999-00	Grand Jury Proceedings	Ch. 1170/96	227	$ 1,595,325	$ 1,587,332	$ 7,993	$ -	$ -	$ -	$ 7,993
1999-00	Mandate Reimbursement Process	Ch. 486/75	41	$ 5,248,034	$ 5,248,034	$ -	$ 115,251	$ 114,140	$ 1,111	$ (1,111)
1999-00	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 14,478,554	$ 4,461,386	$ 10,017,168	$ 5,889,090	$ 5,852,305	$ 36,785	$ 9,980,383
1999-00	Perinatal Services	Ch. 1603/90	124	$ 811,698	$ 811,698	$ -	$ 1,488,386	$ 1,402,610	$ 85,776	$ (85,776)
1999-00	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 6,346,409	$ 249,312	$ 6,097,097	$ -	$ -	$ -	$ 6,097,097
1999-00	Sexually Violent Predators	Ch. 762/95	175	$ 8,243,006	$ 8,224,593	$ 18,413	$ 952,022	$ 952,022	$ -	$ 18,413

State Controller's Office
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Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
As of September 30, 2012

				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
1999-00	SIDS Training for Firefighters	Ch. 1111/89	180	$ 105,659	$ 105,659	$ -	$ 14,707	$ 13,726	$ 981	$ (981)
1999-00 Total				**$ 53,577,267**	**$ 37,393,803**	**$ 16,183,464**	**$ 12,705,581**	**$ 10,776,649**	**$ 1,928,932**	**$ 14,254,532**
1998-99	Animal Adoption	Ch. 752/98	213	$ 2,531,909	$ 2,531,909	$ -	$ 1,329,182	$ 918,343	$ 410,839	$ (410,839)
1998-99	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	$ 1,860,575	$ 1,833,763	$ 26,812	$ 215,643	$ 215,643	$ -	$ 26,812
1998-99	Investment Reports	Ch. 783/95	161	$ 4,004,788	$ 4,004,788	$ -	$ 38,458	$ 27,831	$ 10,627	$ (10,627)
1998-99	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 14,470,188	$ 3,439,305	$ 11,030,883	$ 5,357,016	$ 5,267,106	$ 89,910	$ 10,940,973
1998-99	Regional Housing Need Determination	Ch. 1143/80	55	$ 1,323,819	$ 1,323,819	$ -	$ 647,104	$ 481,403	$ 165,701	$ (165,701)
1998-99	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	$ 4,900,892	$ 249,311	$ 4,651,581	$ -	$ -	$ -	$ 4,651,581
1998-99 Total				**$ 29,092,171**	**$ 13,382,895**	**$ 15,709,276**	**$ 7,587,403**	**$ 6,910,326**	**$ 677,077**	**$ 15,032,199**
1997-98	Investment Reports	Ch. 783/95	161	$ 3,081,640	$ 3,056,657	$ 24,983	$ 51,089	$ 42,955	$ 8,134	$ 16,849
1997-98	Mandate Reimbursement Process	Ch. 486/75	41	$ 3,841,394	$ 3,841,394	$ -	$ 230,325	$ 226,466	$ 3,859	$ (3,859)
1997-98	Open Meetings Act II	Ch. 641/86	202	$ 5,881,449	$ 5,875,788	$ 5,661	$ 11,613	$ 11,613	$ -	$ 5,661
1997-98	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 12,868,309	$ 3,269,388	$ 9,598,921	$ 3,359,034	$ 3,359,034	$ -	$ 9,598,921
1997-98 Total				**$ 25,672,792**	**$ 16,043,227**	**$ 9,629,565**	**$ 3,652,061**	**$ 3,640,068**	**$ 11,993**	**$ 9,617,572**
1996-97	Absentee Ballots	Ch. 77/78	2	$ 9,365,007	$ 9,153,177	$ 211,830	$ 1,825,441	$ 1,825,441	$ -	$ 211,830
1996-97	Investment Reports	Ch. 783/95	161	$ 780,221	$ 691,464	$ 88,757	$ 9,532	$ 9,532	$ -	$ 88,757
1996-97	Mandate Reimbursement Process	Ch. 486/75	41	$ 3,560,480	$ 3,560,480	$ -	$ 319,940	$ 319,763	$ 177	$ (177)
1996-97	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 13,976,967	$ 3,578,658	$ 10,398,309	$ 2,223,826	$ 2,221,701	$ 2,125	$ 10,396,184
1996-97 Total				**$ 27,682,675**	**$ 16,983,779**	**$ 10,698,896**	**$ 4,378,739**	**$ 4,376,437**	**$ 2,302**	**$ 10,696,594**
1995-96	Investment Reports	Ch. 783/95	161	$ 488,976	$ 444,107	$ 44,869	$ 5,046	$ 5,046	$ -	$ 44,869
1995-96	Mandate Reimbursement Process	Ch. 486/75	41	$ 2,968,144	$ 2,968,144	$ -	$ 661,263	$ 657,638	$ 3,625	$ (3,625)
1995-96	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 12,271,952	$ 3,172,303	$ 9,099,649	$ 2,521,286	$ 2,500,771	$ 20,515	$ 9,079,134
1995-96	SIDS Training for Firefighters	Ch. 1111/89	180	$ 123,317	$ 123,317	$ -	$ 1,171	$ 711	$ 460	$ (460)
1995-96 Total				**$ 15,852,389**	**$ 6,707,871**	**$ 9,144,518**	**$ 3,188,766**	**$ 3,164,166**	**$ 24,600**	**$ 9,119,918**
1994-95	Business Tax Reporting Requirement	Ch. 1490/84	7	$ 4,719,935	$ 4,719,935	$ -	$ 130,777	$ 123,277	$ 7,500	$ (7,500)
1994-95	Mandate Reimbursement Process	Ch. 486/75	41	$ 3,097,183	$ 3,079,535	$ 17,648	$ 201,105	$ 199,020	$ 2,085	$ 15,563
1994-95	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	$ 10,018,968	$ 2,476,091	$ 7,542,877	$ 2,220,331	$ 2,174,712	$ 45,619	$ 7,497,258
1994-95 Total				**$ 17,836,086**	**$ 10,275,561**	**$ 7,560,525**	**$ 2,552,213**	**$ 2,497,009**	**$ 55,204**	**$ 7,505,321**
1992-93	Firefighters' Cancer Presumption	Ch. 1568/82	23	$ 492,467	$ 492,209	$ 258	$ 48,175	$ 48,175	$ -	$ 258
1992-93	Personal Alarm Devices	Tlt.8	24	$ 722,127	$ 722,127	$ -	$ 2,253	$ -	$ 2,253	$ (2,253)
1992-93	SIDS: Autopsy Protocols	Ch. 955/89	110	$ 898,522	$ 897,729	$ 793	$ 793	$ 793	$ -	$ 793
1992-93 Total				**$ 2,113,116**	**$ 2,112,065**	**$ 1,051**	**$ 51,221**	**$ 48,968**	**$ 2,253**	**$ (1,202)**
1991-92	Mandate Reimbursement Process	Ch. 486/75	41	$ 2,102,143	$ 2,102,143	$ -	$ 153,432	$ 109,451	$ 43,981	$ (43,981)
1991-92	Structural and Wildland Firefighter Safety Clothing and Equipment	Ttl 8 Cal Code	64	$ 7,347,344	$ 7,347,344	$ -	$ 293,279	$ 284,557	$ 8,722	$ (8,722)
1991-92 Total				**$ 9,449,487**	**$ 9,449,487**	**$ -**	**$ 446,711**	**$ 394,008**	**$ 52,703**	**$ (52,703)**
1990-91	Handicapped and Disabled Students	Ch. 1747/84	111	$ 14,952,686	$ 14,840,118	$ 112,568	$ 3,649,063	$ 3,649,063	$ -	$ 112,568
1990-91 Total				**$ 14,952,686**	**$ 14,840,118**	**$ 112,568**	**$ 3,649,063**	**$ 3,649,063**	**$ -**	**$ 112,568**
Grand Total				**$ 1,031,763,361**	**$ 303,939,963**	**$ 727,823,398**	**$ 58,432,333**	**$ 49,410,334**	**$ 9,021,999**	**$ 718,801,399**

Schedule B3:
School Districts

State Controller's Office
Division of Accounting and Reporting
State Mandated Programs by Fiscal Year 2010-11 and Prior Years
Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2010-11	Academic Performance Index	Ch. 695/00	305	$ 383,245	$ -	$ 383,245	$ -	$ -	$ -	$ 383,245
2010-11	Agency Fee Arrangements	Ch. 893/00	269	$ 8,679	$ 1,000	$ 7,679	$ -	$ -	$ -	$ 7,679
2010-11	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,300,948	$ 1,000	$ 1,299,948	$ -	$ -	$ -	$ 1,299,948
2010-11	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 48,564	$ 1,000	$ 47,564	$ -	$ -	$ -	$ 47,564
2010-11	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 507,658	$ 1,000	$ 506,658	$ -	$ -	$ -	$ 506,658
2010-11	Charter Schools I, II, III	Ch. 781/92	278	$ 1,863,628	$ 1,000	$ 1,862,628	$ -	$ -	$ -	$ 1,862,628
2010-11	Child Abuse and Neglect Reporting	Ch. 640/87	309	$ 13,640	$ -	$ 13,640	$ -	$ -	$ -	$ 13,640
2010-11	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 19,800,707	$ 1,000	$ 19,799,707	$ -	$ -	$ -	$ 19,799,707
2010-11	Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	$ 3,175,858	$ 1,000	$ 3,174,858	$ -	$ -	$ -	$ 3,174,858
2010-11	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 9,407,102	$ 1,000	$ 9,406,102	$ -	$ -	$ -	$ 9,406,102
2010-11	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	$ 930,888	$ 1,000	$ 929,888	$ -	$ -	$ -	$ 929,888
2010-11	Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	$ 7,713,953	$ 1,000	$ 7,712,953	$ -	$ -	$ -	$ 7,712,953
2010-11	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 300,245	$ 1,000	$ 299,245	$ -	$ -	$ -	$ 299,245
2010-11	Criminal Background Checks	Ch. 588/97	183	$ 470,619	$ 1,000	$ 469,619	$ -	$ -	$ -	$ 469,619
2010-11	Criminal Background Checks II	Ch. 594/98	251	$ 437,598	$ 1,000	$ 436,598	$ -	$ -	$ -	$ 436,598
2010-11	Differential Pay and Reemployment	Ch. 30/98	253	$ 7,611	$ 1,000	$ 6,611	$ -	$ -	$ -	$ 6,611
2010-11	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 15,135	$ -	$ 15,135	$ -	$ -	$ -	$ 15,135
2010-11	Financial and Compliance Audits	Ch. 36/77	192	$ 280,193	$ 1,000	$ 279,193	$ -	$ -	$ -	$ 279,193
2010-11	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 265,330,232	$ -	$ 265,330,232	$ -	$ -	$ -	$ 265,330,232
2010-11	Habitual Truant	Ch. 1184/75	166	$ 6,217,479	$ 1,000	$ 6,216,479	$ -	$ -	$ -	$ 6,216,479
2010-11	High School Exit Examination	Ch. 1/99	268	$ 6,642,005	$ 1,000	$ 6,641,005	$ -	$ -	$ -	$ 6,641,005
2010-11	Immunization Records	Ch. 1176/77	32	$ 4,525,744	$ 1,000	$ 4,524,744	$ -	$ -	$ -	$ 4,524,744
2010-11	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,645,071	$ 1,000	$ 5,644,071	$ -	$ -	$ -	$ 5,644,071
2010-11	Interdistrict Attendance Permits	Ch. 172/86	148	$ 418,219	$ -	$ 418,219	$ -	$ -	$ -	$ 418,219
2010-11	Intradistrict Attendance	Ch. 161/93	153	$ 4,425,722	$ 1,000	$ 4,424,722	$ -	$ -	$ -	$ 4,424,722
2010-11	Juvenile Court Notices II	Ch. 1423/84	155	$ 965,763	$ 1,000	$ 964,763	$ -	$ -	$ -	$ 964,763
2010-11	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,099,910	$ 1,000	$ 16,098,910	$ -	$ -	$ -	$ 16,098,910
2010-11	Notification of Truancy	Ch. 498/83	48	$ 23,913,167	$ 1,000	$ 23,912,167	$ -	$ -	$ -	$ 23,912,167
2010-11	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,562,434	$ 1,000	$ 3,561,434	$ -	$ -	$ -	$ 3,561,434
2010-11	Physical Education Reports	Ch. 640/97	195	$ 9,000	$ -	$ 9,000	$ -	$ -	$ -	$ 9,000
2010-11	Physical Performance Tests	Ch. 975/95	173	$ 1,560,148	$ 1,000	$ 1,559,148	$ -	$ -	$ -	$ 1,559,148
2010-11	Prevailing Wage Rate	Ch. 1249/78	304	$ 201,323	$ 1,000	$ 200,323	$ -	$ -	$ -	$ 200,323
2010-11	Pupil Health Screenings	Ch. 1208/76	261	$ 789,180	$ 1,000	$ 788,180	$ -	$ -	$ -	$ 788,180
2010-11	Pupil Promotion and Retention	Ch. 100/91	244	$ 1,890,716	$ 1,000	$ 1,889,716	$ -	$ -	$ -	$ 1,889,716
2010-11	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 10,283	$ -	$ 10,283	$ -	$ -	$ -	$ 10,283

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2010-11	Pupil Safety Notices	Ch. 498/83	280	$ 119,811	$ 1,000	$ 118,811	$ -	$ -	$ -	$ 118,811
2010-11	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 4,802,682	$ 1,000	$ 4,801,682	$ -	$ -	$ -	$ 4,801,682
2010-11	Removal of Chemicals	Ch. 1107/84	57	$ 89,704	$ -	$ 89,704	$ -	$ -	$ -	$ 89,704
2010-11	School Accountability Report Cards	Ch. 1463/89	171	$ 2,654,644	$ 1,000	$ 2,653,644	$ -	$ -	$ -	$ 2,653,644
2010-11	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 3,195,555	$ 1,000	$ 3,194,555	$ -	$ -	$ -	$ 3,194,555
2010-11	School District Reorganization	Ch. 1192/80	228	$ 7,405	$ 1,000	$ 6,405	$ -	$ -	$ -	$ 6,405
2010-11	Scoliosis Screening	Ch. 1347/80	58	$ 205,106	$ -	$ 205,106	$ -	$ -	$ -	$ 205,106
2010-11	Student Records	Ch. 593/89	308	$ 242,733	$ -	$ 242,733	$ -	$ -	$ -	$ 242,733
2010-11	The Stull Act	Ch. 498/83	260	$ 17,985,103	$ 1,000	$ 17,984,103	$ -	$ -	$ -	$ 17,984,103
2010-11 Total				**$ 418,175,410**	**$ 34,000**	**$ 418,141,410**	**$ -**	**$ -**	**$ -**	**$ 418,141,410**
2009-10	Academic Performance Index	Ch. 695/00	305	$ 165,265	$ -	$ 165,265	$ -	$ -	$ -	$ 165,265
2009-10	Agency Fee Arrangements	Ch. 893/00	269	$ 12,470	$ 9,355	$ 3,115	$ -	$ -	$ -	$ 3,115
2009-10	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,382,762	$ 1,292,997	$ 89,765	$ -	$ -	$ -	$ 89,765
2009-10	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 490,948	$ 488,623	$ 2,325	$ -	$ -	$ -	$ 2,325
2009-10	Charter Schools I, II, III	Ch. 781/92	278	$ 2,836,753	$ 1,306,000	$ 1,530,753	$ -	$ -	$ -	$ 1,530,753
2009-10	Child Abuse and Neglect Reporting	Ch. 640/87	309	$ 10,638	$ -	$ 10,638	$ -	$ -	$ -	$ 10,638
2009-10	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 23,262,632	$ 1,783,147	$ 21,479,485	$ 5,853	$ 2,133	$ 3,720	$ 21,475,765
2009-10	Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	$ 3,339,644	$ 2,996,282	$ 343,362	$ -	$ -	$ -	$ 343,362
2009-10	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 9,246,935	$ 8,843,988	$ 402,947	$ -	$ -	$ -	$ 402,947
2009-10	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	$ 824,608	$ 1,000	$ 823,608	$ -	$ -	$ -	$ 823,608
2009-10	Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	$ 8,776,032	$ 6,622,523	$ 2,153,509	$ 33,477	$ 5,484	$ 27,993	$ 2,125,516
2009-10	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 337,987	$ 282,000	$ 55,987	$ -	$ -	$ -	$ 55,987
2009-10	Criminal Background Checks	Ch. 588/97	183	$ 444,298	$ 411,866	$ 32,432	$ -	$ -	$ -	$ 32,432
2009-10	Criminal Background Checks II	Ch. 594/98	251	$ 382,165	$ 303,000	$ 79,165	$ -	$ -	$ -	$ 79,165
2009-10	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 12,754	$ 1,000	$ 11,754	$ -	$ -	$ -	$ 11,754
2009-10	Financial and Compliance Audits	Ch. 36/77	192	$ 312,270	$ 303,505	$ 8,765	$ -	$ -	$ -	$ 8,765
2009-10	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 268,157,436	$ 1,000	$ 268,156,436	$ -	$ -	$ -	$ 268,156,436
2009-10	Habitual Truant	Ch. 1184/75	166	$ 6,257,553	$ 1,383,000	$ 4,874,553	$ -	$ -	$ -	$ 4,874,553
2009-10	High School Exit Examination	Ch. 1/99	268	$ 7,419,164	$ 5,775,998	$ 1,643,166	$ -	$ -	$ -	$ 1,643,166
2009-10	Immunization Records	Ch. 1176/77	32	$ 4,668,681	$ 3,802,000	$ 866,681	$ -	$ -	$ -	$ 866,681
2009-10	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,705,616	$ 4,600,235	$ 1,105,381	$ 173	$ 173	$ -	$ 1,105,381
2009-10	Interdistrict Attendance Permits	Ch. 172/86	148	$ 448,120	$ -	$ 448,120	$ -	$ -	$ -	$ 448,120
2009-10	Intradistrict Attendance	Ch. 161/93	153	$ 4,394,453	$ 3,396,996	$ 997,457	$ -	$ -	$ -	$ 997,457
2009-10	Juvenile Court Notices II	Ch. 1423/84	155	$ 1,071,881	$ 993,861	$ 78,020	$ -	$ -	$ -	$ 78,020

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2009-10	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,547,869	$ 995	$ 16,546,874	$ 5	$ 1	$ 4	$ 16,546,870
2009-10	Notification of Truancy	Ch. 498/83	48	$ 18,676,860	$ 3,645,000	$ 15,031,860	$ -	$ -	$ -	$ 15,031,860
2009-10	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,729,137	$ -	$ 3,729,137	$ -	$ -	$ -	$ 3,729,137
2009-10	Physical Education Reports	Ch. 640/97	195	$ 10,552	$ 1,000	$ 9,552	$ -	$ -	$ -	$ 9,552
2009-10	Physical Performance Tests	Ch. 975/95	173	$ 1,540,395	$ 1,455,607	$ 84,788	$ 1,826	$ 1,826	$ -	$ 84,788
2009-10	Prevailing Wage Rate	Ch. 1249/78	304	$ 22,223	$ -	$ 22,223	$ -	$ -	$ -	$ 22,223
2009-10	Pupil Health Screenings	Ch. 1208/76	261	$ 906,604	$ 746,761	$ 159,843	$ -	$ -	$ -	$ 159,843
2009-10	Pupil Promotion and Retention	Ch. 100/91	244	$ 2,767,841	$ 1,073,998	$ 1,693,843	$ -	$ -	$ -	$ 1,693,843
2009-10	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 113,910	$ 981	$ 112,929	$ 19	$ 19	$ -	$ 112,929
2009-10	Pupil Safety Notices	Ch. 498/83	280	$ 118,719	$ 72,000	$ 46,719	$ -	$ -	$ -	$ 46,719
2009-10	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 5,414,487	$ 5,174,605	$ 239,882	$ 30,395	$ -	$ 30,395	$ 209,487
2009-10	Removal of Chemicals	Ch. 1107/84	57	$ 973,526	$ 1,000	$ 972,526	$ -	$ -	$ -	$ 972,526
2009-10	School Accountability Report Cards	Ch. 1463/89	171	$ 2,365,488	$ -	$ 2,365,488	$ -	$ -	$ -	$ 2,365,488
2009-10	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 3,461,835	$ 2,666,881	$ 794,954	$ -	$ -	$ -	$ 794,954
2009-10	School District Reorganization	Ch. 1192/80	228	$ 1,019	$ 1,000	$ 19	$ -	$ -	$ -	$ 19
2009-10	Scoliosis Screening	Ch. 1347/80	58	$ 3,292,644	$ 1,000	$ 3,291,644	$ -	$ -	$ -	$ 3,291,644
2009-10	Student Records	Ch. 593/89	308	$ 224,162	$ -	$ 224,162	$ -	$ -	$ -	$ 224,162
2009-10	The Stull Act	Ch. 498/83	260	$ 19,781,136	$ 18,244,203	$ 1,536,933	$ -	$ -	$ -	$ 1,536,933
2009-10 Total				**$ 429,909,472**	**$ 77,683,407**	**$ 352,226,065**	**$ 71,748**	**$ 9,636**	**$ 62,112**	**$ 352,163,953**
2008-09	Academic Performance Index	Ch. 695/00	305	$ 125,080	$ -	$ 125,080	$ -	$ -	$ -	$ 125,080
2008-09	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,582,037	$ 1,582,037	$ -	$ 5,161	$ 4,112	$ 1,049	$ (1,049)
2008-09	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 103,369	$ 84,999	$ 18,370	$ -	$ -	$ -	$ 18,370
2008-09	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 614,283	$ 598,478	$ 15,805	$ 1,120	$ 1,120	$ -	$ 15,805
2008-09	Charter Schools I, II, III	Ch. 781/92	278	$ 2,559,473	$ 1,367,020	$ 1,192,453	$ -	$ -	$ -	$ 1,192,453
2008-09	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 22,160,127	$ 2,713,539	$ 19,446,588	$ 20,789	$ 12,350	$ 8,439	$ 19,438,149
2008-09	Comprehensive School Safety Plans	Ch. 736/97	223	$ 4,143,100	$ 3,647,550	$ 495,550	$ 7,808	$ 5,918	$ 1,890	$ 493,660
2008-09	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	$ 3,616	$ -	$ 3,616	$ -	$ -	$ -	$ 3,616
2008-09	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 10,098,477	$ 10,092,640	$ 5,837	$ 865,406	$ 11,587	$ 853,819	$ (847,982)
2008-09	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	$ 891,533	$ -	$ 891,533	$ -	$ -	$ -	$ 891,533
2008-09	Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	$ 8,511,984	$ 7,659,423	$ 852,561	$ 1,049	$ -	$ 1,049	$ 851,512
2008-09	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 346,268	$ 285,499	$ 60,769	$ -	$ -	$ -	$ 60,769
2008-09	Criminal Background Checks	Ch. 588/97	183	$ 697,267	$ 663,358	$ 33,909	$ 825	$ 825	$ -	$ 33,909
2008-09	Criminal Background Checks II	Ch. 594/98	251	$ 368,652	$ 355,003	$ 13,649	$ 1,055	$ -	$ 1,055	$ 12,594

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2008-09	Differential Pay and Reemployment	Ch. 30/98	253	$ 2,996	$ 2,000	$ 996	$ -	$ -	$ -	$ 996
2008-09	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 13,929	$ -	$ 13,929	$ -	$ -	$ -	$ 13,929
2008-09	Financial and Compliance Audits	Ch. 36/77	192	$ 439,129	$ 373,791	$ 65,338	$ 2,175	$ -	$ 2,175	$ 63,163
2008-09	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 261,471,058	$ 52,675	$ 261,418,383	$ -	$ -	$ -	$ 261,418,383
2008-09	Habitual Truant	Ch. 1184/75	166	$ 6,805,634	$ 1,452,088	$ 5,353,546	$ 1,233	$ -	$ 1,233	$ 5,352,313
2008-09	High School Exit Examination	Ch. 1/99	268	$ 7,755,202	$ 5,776,234	$ 1,978,968	$ -	$ -	$ -	$ 1,978,968
2008-09	Immunization Records	Ch. 1176/77	32	$ 4,662,828	$ 4,614,045	$ 48,783	$ 15,736	$ 1,119	$ 14,617	$ 34,166
2008-09	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,708,071	$ 5,507,176	$ 200,895	$ 9,336	$ 2,366	$ 6,970	$ 193,925
2008-09	Interdistrict Attendance Permits	Ch. 172/86	148	$ 363,201	$ -	$ 363,201	$ -	$ -	$ -	$ 363,201
2008-09	Intradistrict Attendance	Ch. 161/93	153	$ 4,431,609	$ 3,607,488	$ 824,121	$ 12,323	$ 8,157	$ 4,166	$ 819,955
2008-09	Juvenile Court Notices II	Ch. 1423/84	155	$ 1,256,537	$ 1,094,166	$ 162,371	$ -	$ -	$ -	$ 162,371
2008-09	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,990,141	$ 4,536	$ 16,985,605	$ -	$ -	$ -	$ 16,985,605
2008-09	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	$ 65,051	$ -	$ 65,051	$ -	$ -	$ -	$ 65,051
2008-09	Notification of Truancy	Ch. 498/83	48	$ 17,448,872	$ 4,028,307	$ 13,420,565	$ 1,150	$ -	$ 1,150	$ 13,419,415
2008-09	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,808,780	$ 10,302	$ 3,798,478	$ -	$ -	$ -	$ 3,798,478
2008-09	Physical Education Reports	Ch. 640/97	195	$ 4,262	$ -	$ 4,262	$ -	$ -	$ -	$ 4,262
2008-09	Physical Performance Tests	Ch. 975/95	173	$ 1,813,841	$ 1,809,170	$ 4,671	$ 4,260	$ 1,109	$ 3,151	$ 1,520
2008-09	Prevailing Wage Rate	Ch. 1249/78	304	$ 89,256	$ -	$ 89,256	$ -	$ -	$ -	$ 89,256
2008-09	Pupil Health Screenings	Ch. 1208/76	261	$ 927,647	$ 804,471	$ 123,176	$ 12,411	$ 10,089	$ 2,322	$ 120,854
2008-09	Pupil Promotion and Retention	Ch. 100/91	244	$ 3,165,880	$ 1,119,074	$ 2,046,806	$ 471	$ 471	$ -	$ 2,046,806
2008-09	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 109,517	$ -	$ 109,517	$ -	$ -	$ -	$ 109,517
2008-09	Pupil Safety Notices	Ch. 498/83	280	$ 87,954	$ 75,760	$ 12,194	$ -	$ -	$ -	$ 12,194
2008-09	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 6,359,105	$ 5,670,909	$ 688,196	$ 203,356	$ 203,356	$ -	$ 688,196
2008-09	Removal of Chemicals	Ch. 1107/84	57	$ 1,148,847	$ -	$ 1,148,847	$ -	$ -	$ -	$ 1,148,847
2008-09	School Accountability Report Cards	Ch. 1463/89	171	$ 2,152,482	$ 2,255	$ 2,150,227	$ -	$ -	$ -	$ 2,150,227
2008-09	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 3,369,668	$ 33,027	$ 3,336,641	$ -	$ -	$ -	$ 3,336,641
2008-09	Scoliosis Screening	Ch. 1347/80	58	$ 3,305,227	$ 8,159	$ 3,297,068	$ -	$ -	$ -	$ 3,297,068
2008-09	Student Records	Ch. 593/89	308	$ 135,845	$ -	$ 135,845	$ -	$ -	$ -	$ 135,845
2008-09	The Stull Act	Ch. 498/83	260	$ 23,045,261	$ 20,001,947	$ 3,043,314	$ 31,751	$ 22,292	$ 9,459	$ 3,033,855
2008-09 Total				**$ 429,143,096**	**$ 85,097,126**	**$ 344,045,970**	**$ 1,197,415**	**$ 284,871**	**$ 912,544**	**$ 343,133,426**
2007-08	Absentee Ballots	Ch. 77/78	170	$ 19,654	$ 1,000	$ 18,654	$ -	$ -	$ -	$ 18,654
2007-08	Academic Performance Index	Ch. 695/00	305	$ 117,677	$ -	$ 117,677	$ -	$ -	$ -	$ 117,677
2007-08	Agency Fee Arrangements	Ch. 893/00	269	$ 5,267	$ -	$ 5,267	$ -	$ -	$ -	$ 5,267
2007-08	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,709,778	$ 993	$ 1,708,785	$ 7	$ 4	$ 3	$ 1,708,782
2007-08	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 72,259	$ -	$ 72,259	$ -	$ -	$ -	$ 72,259
2007-08	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 624,944	$ 2,327	$ 622,617	$ -	$ -	$ -	$ 622,617
2007-08	Charter Schools I, II, III	Ch. 781/92	278	$ 1,740,107	$ 34,978	$ 1,705,129	$ -	$ -	$ -	$ 1,705,129
2007-08	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 24,970,299	$ 152,919	$ 24,817,380	$ 2	$ -	$ 2	$ 24,817,378
2007-08	Comprehensive School Safety Plans	Ch. 736/97	223	$ 4,039,484	$ 11,297	$ 4,028,187	$ 3	$ -	$ 3	$ 4,028,184

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	$ 3,730	$ -	$ 3,730	$ -	$ -	$ -	$ 3,730
2007-08	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 9,232,098	$ 17,576	$ 9,214,522	$ 2	$ -	$ 2	$ 9,214,520
2007-08	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	$ 891,073	$ 1,000	$ 890,073	$ -	$ -	$ -	$ 890,073
2007-08	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 346,400	$ -	$ 346,400	$ -	$ -	$ -	$ 346,400
2007-08	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 309,546	$ 1,000	$ 308,546	$ -	$ -	$ -	$ 308,546
2007-08	Criminal Background Checks	Ch. 588/97	183	$ 868,045	$ 3,595	$ 864,450	$ 1	$ 1	$ -	$ 864,450
2007-08	Criminal Background Checks II	Ch. 594/98	251	$ 460,761	$ 1,000	$ 459,761	$ -	$ -	$ -	$ 459,761
2007-08	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 13,054	$ 1,000	$ 12,054	$ -	$ -	$ -	$ 12,054
2007-08	Financial and Compliance Audits	Ch. 36/77	192	$ 415,489	$ 1,000	$ 414,489	$ -	$ -	$ -	$ 414,489
2007-08	Graduation Requirements	Ch. 498/83	26	$ 27,025,365	$ 756	$ 27,024,609	$ -	$ -	$ -	$ 27,024,609
2007-08	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 231,450,482	$ 2,117,081	$ 229,333,401	$ -	$ -	$ -	$ 229,333,401
2007-08	Habitual Truant	Ch. 1184/75	166	$ 7,098,458	$ 3,299	$ 7,095,159	$ 1	$ -	$ 1	$ 7,095,158
2007-08	High School Exit Examination	Ch. 1/99	268	$ 6,941,272	$ 2,643	$ 6,938,629	$ -	$ -	$ -	$ 6,938,629
2007-08	Immunization Records	Ch. 1176/77	32	$ 4,365,533	$ 155,818	$ 4,209,715	$ 2	$ -	$ 2	$ 4,209,713
2007-08	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,527,457	$ 14,201	$ 5,513,256	$ 3	$ -	$ 3	$ 5,513,253
2007-08	Interdistrict Attendance Permits	Ch. 172/86	148	$ 267,572	$ -	$ 267,572	$ -	$ -	$ -	$ 267,572
2007-08	Intradistrict Attendance	Ch. 161/93	153	$ 4,238,386	$ 1,000	$ 4,237,386	$ -	$ -	$ -	$ 4,237,386
2007-08	Juvenile Court Notices II	Ch. 1423/84	155	$ 1,159,907	$ 1,000	$ 1,158,907	$ -	$ -	$ -	$ 1,158,907
2007-08	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,426,591	$ 3,785	$ 16,422,806	$ -	$ -	$ -	$ 16,422,806
2007-08	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	$ 3,431,203	$ 9,177	$ 3,422,026	$ -	$ -	$ -	$ 3,422,026
2007-08	Notification of Truancy	Ch. 498/83	48	$ 16,740,504	$ 34,735	$ 16,705,769	$ 10	$ 9	$ 1	$ 16,705,768
2007-08	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	$ 7,031,993	$ 14,335	$ 7,017,658	$ 9	$ 7	$ 2	$ 7,017,656
2007-08	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,830,664	$ 7,754	$ 3,822,910	$ -	$ -	$ -	$ 3,822,910
2007-08	Physical Education Reports	Ch. 640/97	195	$ 9,014	$ 1,000	$ 8,014	$ -	$ -	$ -	$ 8,014
2007-08	Physical Performance Tests	Ch. 975/95	173	$ 1,914,563	$ 4,709	$ 1,909,854	$ 2	$ -	$ 2	$ 1,909,852
2007-08	Prevailing Wage Rate	Ch. 1249/78	304	$ 150,888	$ -	$ 150,888	$ -	$ -	$ -	$ 150,888
2007-08	Pupil Health Screenings	Ch. 1208/76	261	$ 840,766	$ 3,095	$ 837,671	$ 2	$ -	$ 2	$ 837,669
2007-08	Pupil Promotion and Retention	Ch. 100/91	244	$ 2,791,621	$ 12,880	$ 2,778,741	$ -	$ -	$ -	$ 2,778,741
2007-08	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 90,993	$ 1,000	$ 89,993	$ -	$ -	$ -	$ 89,993
2007-08	Pupil Safety Notices	Ch. 498/83	280	$ 23,080	$ -	$ 23,080	$ -	$ -	$ -	$ 23,080
2007-08	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 7,077,212	$ 6,137	$ 7,071,075	$ 22	$ 21	$ 1	$ 7,071,074
2007-08	Removal of Chemicals	Ch. 1107/84	57	$ 1,377,233	$ 1,000	$ 1,376,233	$ -	$ -	$ -	$ 1,376,233
2007-08	School Accountability Report Cards	Ch. 1463/89	171	$ 2,194,113	$ 3,695	$ 2,190,418	$ -	$ -	$ -	$ 2,190,418

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2007-08	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 3,249,617	$ 6,419	$ 3,243,198	$ 2,501	$ -	$ 2,501	$ 3,240,697
2007-08	School District Reorganization	Ch. 1192/80	228	$ 47,447	$ 1,000	$ 46,447	$ -	$ -	$ -	$ 46,447
2007-08	Scoliosis Screening	Ch. 1347/80	58	$ 3,358,946	$ 13,460	$ 3,345,486	$ 2	$ -	$ 2	$ 3,345,484
2007-08	Student Records	Ch. 593/89	308	$ 124,119	$ -	$ 124,119	$ -	$ -	$ -	$ 124,119
2007-08	The Stull Act	Ch. 498/83	260	$ 22,168,457	$ 55,548	$ 22,112,909	$ -	$ -	$ -	$ 22,112,909
2007-08 Total				**$ 426,793,121**	**$ 2,705,212**	**$ 424,087,909**	**$ 2,569**	**$ 42**	**$ 2,527**	**$ 424,085,382**
2006-07	Academic Performance Index	Ch. 695/00	305	$ 110,375	$ -	$ 110,375	$ -	$ -	$ -	$ 110,375
2006-07	Agency Fee Arrangements	Ch. 893/00	269	$ 6,011	$ -	$ 6,011	$ -	$ -	$ -	$ 6,011
2006-07	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,560,401	$ 203,760	$ 1,356,641	$ 54,327	$ 52,385	$ 1,942	$ 1,354,699
2006-07	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 87,725	$ -	$ 87,725	$ -	$ -	$ -	$ 87,725
2006-07	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 713,312	$ 106,094	$ 607,218	$ 28,693	$ 15,027	$ 13,666	$ 593,552
2006-07	Charter Schools II	Ch. 34/98	249	$ 2,310,086	$ 148,060	$ 2,162,026	$ 20,038	$ 20,038	$ -	$ 2,162,026
2006-07	Charter Schools III	Ch. 34/98	277	$ 84,983	$ -	$ 84,983	$ -	$ -	$ -	$ 84,983
2006-07	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 27,822,780	$ 3,467,271	$ 24,355,509	$ 147,591	$ 116,500	$ 31,091	$ 24,324,418
2006-07	Comprehensive School Safety Plans	Ch. 736/97	223	$ 3,840,616	$ 619,014	$ 3,221,602	$ 93,330	$ 44,981	$ 48,349	$ 3,173,253
2006-07	Comprehensive School Safety Plans II: Earthquake Emergency Procedure System and Use of School Buildings During Emergencies	Ch. 895/04	312	$ 3,045	$ -	$ 3,045	$ -	$ -	$ -	$ 3,045
2006-07	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 9,089,467	$ 1,413,223	$ 7,676,244	$ 55,256	$ 48,794	$ 6,462	$ 7,669,782
2006-07	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 215,949	$ -	$ 215,949	$ -	$ -	$ -	$ 215,949
2006-07	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 271,074	$ 36,060	$ 235,014	$ 15,158	$ 15,158	$ -	$ 235,014
2006-07	Criminal Background Checks	Ch. 588/97	183	$ 814,197	$ 124,668	$ 689,529	$ 40,116	$ 39,439	$ 677	$ 688,852
2006-07	Criminal Background Checks II	Ch. 594/98	251	$ 555,064	$ 41,213	$ 513,851	$ 6,681	$ 4,892	$ 1,789	$ 512,062
2006-07	Differential Pay and Reemployment	Ch. 30/98	253	$ 2,919	$ -	$ 2,919	$ 1,262	$ -	$ 1,262	$ 1,657
2006-07	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 14,079	$ 2,924	$ 11,155	$ -	$ -	$ -	$ 11,155
2006-07	Financial and Compliance Audits	Ch. 36/77	192	$ 386,700	$ 38,250	$ 348,450	$ 16,641	$ 15,516	$ 1,125	$ 347,325
2006-07	Graduation Requirements	Ch. 498/83	26	$ 65,289,197	$ 11,544,437	$ 53,744,760	$ 491,772	$ 3,394	$ 488,378	$ 53,256,382
2006-07	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 173,270,634	$ 3,001,107	$ 170,269,527	$ -	$ -	$ -	$ 170,269,527
2006-07	Habitual Truant	Ch. 1184/75	166	$ 6,719,558	$ 797,003	$ 5,922,555	$ 69,622	$ 47,948	$ 21,674	$ 5,900,881
2006-07	High School Exit Examination	Ch. 1/99	268	$ 6,589,849	$ 8,349	$ 6,581,500	$ -	$ -	$ -	$ 6,581,500
2006-07	Immunization Records	Ch. 1176/77	32	$ 4,151,300	$ 1,867,265	$ 2,284,035	$ 1,352	$ 912	$ 440	$ 2,283,595
2006-07	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,373,009	$ 908,287	$ 4,464,722	$ 10,680	$ 8,110	$ 2,570	$ 4,462,152
2006-07	Interdistrict Attendance Permits	Ch. 172/86	148	$ 224,134	$ -	$ 224,134	$ -	$ -	$ -	$ 224,134
2006-07	Intradistrict Attendance	Ch. 161/93	153	$ 4,509,810	$ 783,969	$ 3,725,841	$ 65,813	$ 59,790	$ 6,023	$ 3,719,818
2006-07	Juvenile Court Notices II	Ch. 1423/84	155	$ 1,176,856	$ 170,781	$ 1,006,075	$ 28,652	$ 27,448	$ 1,204	$ 1,004,871
2006-07	Law Enforcement Agency Notification	Ch. 1117/89	157	$ 1,656,765	$ 201,715	$ 1,455,050	$ 32,178	$ 30,021	$ 2,157	$ 1,452,893
2006-07	Mandate Reimbursement Process	Ch. 486/75	42	$ 15,562,513	$ 3,786	$ 15,558,727	$ -	$ -	$ -	$ 15,558,727

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2006-07	Missing Children Reports	Ch. 249/86	275	$ 23,761	$ -	$ 23,761	$ -	$ -	$ -	$ 23,761
2006-07	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	$ 3,247,854	$ 21,019	$ 3,226,835	$ -	$ -	$ -	$ 3,226,835
2006-07	Notification of Truancy	Ch. 498/83	48	$ 14,280,248	$ 1,944,636	$ 12,335,612	$ 203,988	$ 199,635	$ 4,353	$ 12,331,259
2006-07	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	$ 6,617,290	$ 923,200	$ 5,694,090	$ 60,300	$ 54,923	$ 5,377	$ 5,688,713
2006-07	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,724,236	$ 4,639	$ 3,719,597	$ -	$ -	$ -	$ 3,719,597
2006-07	Physical Education Reports	Ch. 640/97	195	$ 6,689	$ -	$ 6,689	$ -	$ -	$ -	$ 6,689
2006-07	Physical Performance Tests	Ch. 975/95	173	$ 1,756,962	$ 658,882	$ 1,098,080	$ 42,573	$ 37,208	$ 5,365	$ 1,092,715
2006-07	Prevailing Wage Rate	Ch. 1249/78	304	$ 52,810	$ -	$ 52,810	$ -	$ -	$ -	$ 52,810
2006-07	Pupil Health Screenings	Ch. 1208/76	261	$ 814,086	$ 146,439	$ 667,647	$ 72,250	$ 29,296	$ 42,954	$ 624,693
2006-07	Pupil Promotion and Retention	Ch. 100/91	244	$ 3,239,841	$ 424,439	$ 2,815,402	$ 73,306	$ 50,311	$ 22,995	$ 2,792,407
2006-07	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 68,265	$ 53,939	$ 14,326	$ 1,388	$ 1,388	$ -	$ 14,326
2006-07	Pupil Safety Notices	Ch. 498/83	280	$ 14,665	$ -	$ 14,665	$ -	$ -	$ -	$ 14,665
2006-07	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 7,224,918	$ 506,503	$ 6,718,415	$ 35,024	$ 25,955	$ 9,069	$ 6,709,346
2006-07	Removal of Chemicals	Ch. 1107/84	57	$ 964,299	$ 54,289	$ 910,010	$ 14,205	$ 14,205	$ -	$ 910,010
2006-07	School Accountability Report Cards	Ch. 1463/89	171	$ 2,196,998	$ 2,251	$ 2,194,747	$ -	$ -	$ -	$ 2,194,747
2006-07	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 2,758,435	$ 309,403	$ 2,449,032	$ 42,825	$ 40,423	$ 2,402	$ 2,446,630
2006-07	School District Reorganization	Ch. 1192/80	228	$ 14,952	$ -	$ 14,952	$ -	$ -	$ -	$ 14,952
2006-07	Scoliosis Screening	Ch. 1347/80	58	$ 3,087,553	$ 520,351	$ 2,567,202	$ 15,442	$ 13,514	$ 1,928	$ 2,565,274
2006-07	Student Records	Ch. 593/89	308	$ 83,236	$ -	$ 83,236	$ -	$ -	$ -	$ 83,236
2006-07	The Stull Act	Ch. 498/83	260	$ 20,924,951	$ 148,316	$ 20,776,635	$ -	$ -	$ -	$ 20,776,635
2006-07 Total				**$ 403,514,457**	**$ 31,205,542**	**$ 372,308,915**	**$ 1,740,463**	**$ 1,017,211**	**$ 723,252**	**$ 371,585,663**
2005-06	Academic Performance Index	Ch. 695/00	305	$ 91,574	$ -	$ 91,574	$ -	$ -	$ -	$ 91,574
2005-06	Agency Fee Arrangements	Ch. 893/00	269	$ 13,832	$ -	$ 13,832	$ -	$ -	$ -	$ 13,832
2005-06	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,529,642	$ 207,496	$ 1,322,146	$ -	$ -	$ -	$ 1,322,146
2005-06	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 81,632	$ -	$ 81,632	$ -	$ -	$ -	$ 81,632
2005-06	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 789,966	$ 124,841	$ 665,125	$ -	$ -	$ -	$ 665,125
2005-06	Charter Schools II	Ch. 34/98	249	$ 1,894,352	$ 64,827	$ 1,829,525	$ -	$ -	$ -	$ 1,829,525
2005-06	Charter Schools III	Ch. 34/98	277	$ 9,521	$ -	$ 9,521	$ -	$ -	$ -	$ 9,521
2005-06	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 28,153,468	$ 18,933,286	$ 9,220,182	$ 6,504,563	$ 5,404,226	$ 1,100,337	$ 8,119,845
2005-06	Comprehensive School Safety Plans	Ch. 736/97	223	$ 4,128,203	$ 282,342	$ 3,845,861	$ -	$ -	$ -	$ 3,845,861
2005-06	Comprehensive School Safety Plans II: Earthquake Emergency Procedure System and Use of School Buildings During Emergencies	Ch. 895/04	312	$ 1,649	$ -	$ 1,649	$ -	$ -	$ -	$ 1,649
2005-06	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 8,377,096	$ 2,847,159	$ 5,529,937	$ -	$ -	$ -	$ 5,529,937
2005-06	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 221,637	$ -	$ 221,637	$ -	$ -	$ -	$ 221,637

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2005-06	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	$ 330,968	$ 3,536	$ 327,432	$ -	$ -	$ -	$ 327,432
2005-06	Criminal Background Checks	Ch. 588/97	183	$ 1,054,716	$ 748,138	$ 306,578	$ 324,824	$ 323,081	$ 1,743	$ 304,835
2005-06	Criminal Background Checks II	Ch. 594/98	251	$ 347,467	$ 11,457	$ 336,010	$ -	$ -	$ -	$ 336,010
2005-06	Differential Pay and Reemployment	Ch. 30/98	253	$ 9,089	$ 968	$ 8,121	$ -	$ -	$ -	$ 8,121
2005-06	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	$ 11,182	$ 1,696	$ 9,486	$ -	$ -	$ -	$ 9,486
2005-06	Financial and Compliance Audits	Ch. 36/77	192	$ 345,937	$ 68,025	$ 277,912	$ -	$ -	$ -	$ 277,912
2005-06	Graduation Requirements	Ch. 498/83	26	$ 43,202,517	$ 18,607,255	$ 24,595,262	$ 2,628,221	$ 940,748	$ 1,687,473	$ 22,907,789
2005-06	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 178,622,302	$ 6,217,536	$ 172,404,766	$ -	$ -	$ -	$ 172,404,766
2005-06	Habitual Truant	Ch. 1184/75	166	$ 5,514,935	$ 580,255	$ 4,934,680	$ -	$ -	$ -	$ 4,934,680
2005-06	High School Exit Examination	Ch. 1/99	268	$ 6,928,053	$ 1,095,422	$ 5,832,631	$ -	$ -	$ -	$ 5,832,631
2005-06	Immunization Records	Ch. 1176/77	32	$ 3,940,566	$ 2,825,996	$ 1,114,570	$ -	$ -	$ -	$ 1,114,570
2005-06	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 5,033,509	$ 1,271,738	$ 3,761,771	$ -	$ -	$ -	$ 3,761,771
2005-06	Interdistrict Attendance Permits	Ch. 172/86	148	$ 187,472	$ -	$ 187,472	$ -	$ -	$ -	$ 187,472
2005-06	Intradistrict Attendance	Ch. 161/93	153	$ 4,741,022	$ 2,882,466	$ 1,858,556	$ 1,319,463	$ 1,295,954	$ 23,509	$ 1,835,047
2005-06	Juvenile Court Notices II	Ch. 1423/84	155	$ 1,185,878	$ 219,376	$ 966,502	$ -	$ -	$ -	$ 966,502
2005-06	Law Enforcement Agency Notification	Ch. 1117/89	157	$ 1,550,790	$ 59,580	$ 1,491,210	$ -	$ -	$ -	$ 1,491,210
2005-06	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,509,166	$ 1,225,153	$ 15,284,013	$ -	$ -	$ -	$ 15,284,013
2005-06	Missing Children Reports	Ch. 249/86	275	$ 3,950	$ -	$ 3,950	$ -	$ -	$ -	$ 3,950
2005-06	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	$ 2,832,985	$ 88,163	$ 2,744,822	$ -	$ -	$ -	$ 2,744,822
2005-06	Notification of Truancy	Ch. 498/83	48	$ 12,361,312	$ 2,308,281	$ 10,053,031	$ -	$ -	$ -	$ 10,053,031
2005-06	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	$ 5,726,692	$ 3,875,457	$ 1,851,235	$ 1,191,913	$ 1,166,078	$ 25,835	$ 1,825,400
2005-06	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 3,290,016	$ 3,670	$ 3,286,346	$ -	$ -	$ -	$ 3,286,346
2005-06	Prevailing Wage Rate	Ch. 1249/78	304	$ 6,121	$ -	$ 6,121	$ -	$ -	$ -	$ 6,121
2005-06	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	$ -	$ -	$ -	$ 154,522	$ 150,626	$ 3,896	$ (3,896)
2005-06	Pupil Exclusions	Ch. . 668/78	165	$ 858,538	$ -	$ 858,538	$ -	$ -	$ -	$ 858,538
2005-06	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 4,310,781	$ 149,779	$ 4,161,002	$ -	$ -	$ -	$ 4,161,002
2005-06	Pupil Health Screenings	Ch. 1208/76	261	$ 1,283,024	$ 139,749	$ 1,143,275	$ -	$ -	$ -	$ 1,143,275
2005-06	Pupil Promotion and Retention	Ch. 100/91	244	$ 3,003,669	$ 412,997	$ 2,590,672	$ -	$ -	$ -	$ 2,590,672
2005-06	Pupil Residency Verification and Appeals	Ch. 309/95	182	$ 283,789	$ 2,296	$ 281,493	$ -	$ -	$ -	$ 281,493
2005-06	Pupil Safety Notices	Ch. 498/83	280	$ 10,081	$ -	$ 10,081	$ -	$ -	$ -	$ 10,081
2005-06	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 3,178,106	$ 303,195	$ 2,874,911	$ -	$ -	$ -	$ 2,874,911
2005-06	Removal of Chemicals	Ch. 1107/84	57	$ 1,056,004	$ 118,591	$ 937,413	$ -	$ -	$ -	$ 937,413
2005-06	School Accountability Report Cards	Ch. 1463/89	171	$ 1,823,094	$ 4,537	$ 1,818,557	$ -	$ -	$ -	$ 1,818,557
2005-06	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	$ 2,148,402	$ (201,618)	$ 2,350,020	$ -	$ -	$ -	$ 2,350,020
2005-06	Scoliosis Screening	Ch. 1347/80	58	$ 2,981,606	$ 608,394	$ 2,373,212	$ -	$ -	$ -	$ 2,373,212
2005-06	Student Records	Ch. 593/89	308	$ 68,777	$ -	$ 68,777	$ -	$ -	$ -	$ 68,777
2005-06	The Stull Act	Ch. 498/83	260	$ 22,852,794	$ 2,723,402	$ 20,129,392	$ -	$ -	$ -	$ 20,129,392
2005-06 Total				**$ 382,887,882**	**$ 68,815,441**	**$ 314,072,441**	**$ 12,123,506**	**$ 9,280,713**	**$ 2,842,793**	**$ 311,229,648**

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Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2004-05	Academic Performance Index	Ch. 695/00	305	$ 83,768	$ -	$ 83,768	$ -	$ -	$ -	$ 83,768
2004-05	Agency Fee Arrangements	Ch. 893/00	269	$ 11,498	$ -	$ 11,498	$ -	$ -	$ -	$ 11,498
2004-05	AIDS Prevention Instruction II	Ch. 818/91	250	$ 1,663,814	$ 1,663,814	$ -	$ 1,097	$ -	$ 1,097	$ (1,097)
2004-05	American Government Course Document Requirements	Ch. 778/96	179	$ 35,823	$ 35,823	$ -	$ 1,728	$ -	$ 1,728	$ (1,728)
2004-05	Annual Parent Notification III	Ch. 448/75	221	$ 6,550,640	$ 6,550,640	$ -	$ 11,682	$ -	$ 11,682	$ (11,682)
2004-05	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 84,930	$ -	$ 84,930	$ -	$ -	$ -	$ 84,930
2004-05	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	$ 862,291	$ 862,291	$ -	$ 8,341	$ -	$ 8,341	$ (8,341)
2004-05	Charter Schools III	Ch. 34/98	277	$ 1,932	$ -	$ 1,932	$ -	$ -	$ -	$ 1,932
2004-05	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	$ 1,029	$ -	$ 1,029	$ -	$ -	$ -	$ 1,029
2004-05	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	$ 3,836,796	$ 3,836,796	$ -	$ 232,908	$ 227,523	$ 5,385	$ (5,385)
2004-05	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 278,636	$ -	$ 278,636	$ -	$ -	$ -	$ 278,636
2004-05	Criminal Background Checks	Ch. 588/97	183	$ 972,414	$ 972,414	$ -	$ 5,164	$ -	$ 5,164	$ (5,164)
2004-05	Criminal Background Checks II	Ch. 594/98	251	$ 410,381	$ 410,381	$ -	$ 13,269	$ -	$ 13,269	$ (13,269)
2004-05	Emergency Procedures, Earthquake Procedures, and Disasters and Comprehensive School Safety Plans	Ch. 1659/84	225	$ 7,692,381	$ 7,692,381	$ -	$ 2,291,343	$ 2,217,084	$ 74,259	$ (74,259)
2004-05	Financial and Compliance Audits	Ch. 36/77	192	$ 326,816	$ 326,816	$ -	$ 28,443	$ 16,875	$ 11,568	$ (11,568)
2004-05	Graduation Requirements	Ch. 498/83	26	$ 32,114,075	$ 15,748,215	$ 16,365,860	$ 1,642,371	$ -	$ 1,642,371	$ 14,723,489
2004-05	Graduation Requirements (07/01/2004 to 12/21/2004)	Ch. 498/93	296	$ 74,192,532	$ 6,601,196	$ 67,591,336	$ -	$ -	$ -	$ 67,591,336
2004-05	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	$ 99,027,117	$ 4,964,664	$ 94,062,453	$ -	$ -	$ -	$ 94,062,453
2004-05	Habitual Truant	Ch. 1184/75	166	$ 5,326,856	$ 5,326,856	$ -	$ 86,788	$ 1,924	$ 84,864	$ (84,864)
2004-05	High School Exit Examination	Ch. 1/99	268	$ 3,889,184	$ 382,026	$ 3,507,158	$ -	$ -	$ -	$ 3,507,158
2004-05	Immunization Records	Ch. 1176/77	32	$ 3,750,504	$ 3,750,504	$ -	$ 7,395	$ 5,028	$ 2,367	$ (2,367)
2004-05	Immunization Records - Hepatitis B	Ch. 325/78	230	$ 4,852,850	$ 4,852,850	$ -	$ 4,855	$ 3,446	$ 1,409	$ (1,409)
2004-05	Interdistrict Attendance Permits	Ch. 172/86	148	$ 143,450	$ -	$ 143,450	$ -	$ -	$ -	$ 143,450
2004-05	Mandate Reimbursement Process	Ch. 486/75	42	$ 16,131,558	$ 16,131,558	$ -	$ 196,608	$ -	$ 196,608	$ (196,608)
2004-05	Missing Children Reports	Ch. 249/86	275	$ 7,119	$ -	$ 7,119	$ -	$ -	$ -	$ 7,119
2004-05	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	$ 1,985,085	$ 8,083	$ 1,977,002	$ -	$ -	$ -	$ 1,977,002
2004-05	Notification of Truancy	Ch. 498/83	48	$ 9,690,577	$ 9,690,577	$ -	$ 256,426	$ 193,565	$ 62,861	$ (62,861)
2004-05	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	$ 5,227,141	$ 5,227,141	$ -	$ 1,755	$ -	$ 1,755	$ (1,755)
2004-05	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 5,599,525	$ 1,699,474	$ 3,900,051	$ -	$ -	$ -	$ 3,900,051
2004-05	Physical Performance Tests	Ch. 975/95	173	$ 1,640,120	$ 1,640,120	$ -	$ 21,157	$ -	$ 21,157	$ (21,157)
2004-05	Prevailing Wage Rate	Ch. 1249/78	304	$ 52,254	$ -	$ 52,254	$ -	$ -	$ -	$ 52,254

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				ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2004-05	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	$ 284,214	$ 284,214	$ -	$ 21,795	$ -	$ 21,795	$ (21,795)
2004-05	Pupil Exclusions	Ch. . 668/78	165	$ 2,729,603	$ 2,729,603	$ -	$ 3,259	$ -	$ 3,259	$ (3,259)
2004-05	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 3,862,106	$ 181,412	$ 3,680,694	$ -	$ -	$ -	$ 3,680,694
2004-05	Pupil Health Screenings	Ch. 1208/76	139	$ 357,362	$ 357,362	$ -	$ 160,350	$ 1,165	$ 159,185	$ (159,185)
2004-05	Pupil Promotion and Retention	Ch. 100/91	244	$ 2,403,492	$ 2,403,492	$ -	$ 141,792	$ 133,418	$ 8,374	$ (8,374)
2004-05	Pupil Safety Notices	Ch. 498/83	280	$ 6,645	$ -	$ 6,645	$ -	$ -	$ -	$ 6,645
2004-05	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 2,347,445	$ 2,347,445	$ -	$ 16,180	$ 6,905	$ 9,275	$ (9,275)
2004-05	Removal of Chemicals	Ch. 1107/84	57	$ 1,056,561	$ 497,056	$ 559,505	$ -	$ -	$ -	$ 559,505
2004-05	School Accountability Report Cards	Ch. 1463/89	171	$ 3,386,012	$ 3,372,415	$ 13,597	$ 96,733	$ -	$ 96,733	$ (83,136)
2004-05	School District Fiscal Accountability Reporting	Ch. 100/81	211	$ 2,257,308	$ 2,257,308	$ -	$ 23,731	$ -	$ 23,731	$ (23,731)
2004-05	Scoliosis Screening	Ch. 1347/80	58	$ 2,735,317	$ 2,735,317	$ -	$ 8,173	$ 5,490	$ 2,683	$ (2,683)
2004-05	Student Records	Ch. 593/89	308	$ 75,037	$ -	$ 75,037	$ -	$ -	$ -	$ 75,037
2004-05	The Stull Act	Ch. 498/83	260	$ 20,538,503	$ 4,100,728	$ 16,437,775	$ -	$ -	$ -	$ 16,437,775
2004-05 Total				**$ 328,482,701**	**$ 119,640,972**	**$ 208,841,729**	**$ 5,283,343**	**$ 2,812,423**	**$ 2,470,920**	**$ 206,370,809**
2003-04	Academic Performance Index	Ch. 695/00	305	$ 74,511	$ -	$ 74,511	$ -	$ -	$ -	$ 74,511
2003-04	Agency Fee Arrangements	Ch. 893/00	269	$ 8,283	$ -	$ 8,283	$ -	$ -	$ -	$ 8,283
2003-04	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 49,345	$ -	$ 49,345	$ -	$ -	$ -	$ 49,345
2003-04	Charter Schools III	Ch. 34/98	277	$ 1,295	$ -	$ 1,295	$ -	$ -	$ -	$ 1,295
2003-04	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 28,107,019	$ 28,107,019	$ -	$ 517,475	$ 433,247	$ 84,228	$ (84,228)
2003-04	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 176,468	$ -	$ 176,468	$ -	$ -	$ -	$ 176,468
2003-04	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 169,711,560	$ 7,533,910	$ 162,177,650	$ -	$ -	$ -	$ 162,177,650
2003-04	Grand Jury Proceedings	Ch. 1170/96	226	$ 31,159	$ 13,282	$ 17,877	$ -	$ -	$ -	$ 17,877
2003-04	High School Exit Examination	Ch. 1/99	268	$ 3,069,238	$ 228,359	$ 2,840,879	$ -	$ -	$ -	$ 2,840,879
2003-04	Missing Children Reports	Ch. 249/86	275	$ 1,082	$ -	$ 1,082	$ -	$ -	$ -	$ 1,082
2003-04	Notification of Truancy	Ch. 498/83	48	$ 8,694,253	$ 8,694,253	$ -	$ 1,253,345	$ 405,483	$ 847,862	$ (847,862)
2003-04	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 6,207,326	$ 2,162,772	$ 4,044,554	$ -	$ -	$ -	$ 4,044,554
2003-04	Prevailing Wage Rate	Ch. 1249/78	304	$ 117,173	$ -	$ 117,173	$ -	$ -	$ -	$ 117,173
2003-04	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 3,544,682	$ 146,851	$ 3,397,831	$ -	$ -	$ -	$ 3,397,831
2003-04	Pupil Health Screenings	Ch. 1208/76	139	$ 3,233,418	$ 3,233,418	$ -	$ 966,463	$ -	$ 966,463	$ (966,463)
2003-04	Pupil Safety Notices	Ch. 498/83	280	$ 6,634	$ -	$ 6,634	$ -	$ -	$ -	$ 6,634
2003-04	Removal of Chemicals	Ch. 1107/84	57	$ 1,112,874	$ 652,458	$ 460,416	$ -	$ -	$ -	$ 460,416
2003-04	School Accountability Report Cards	Ch. 1463/89	171	$ 3,863,134	$ 3,863,065	$ 69	$ 69	$ 69	$ -	$ 69
2003-04	Standardized Testing and Reporting	Ch. 828/97	208	$ 18,035,640	$ 6,504,971	$ 11,530,669	$ 18,700	$ 18,700	$ -	$ 11,530,669
2003-04	Student Records	Ch. 593/89	308	$ 53,294	$ -	$ 53,294	$ -	$ -	$ -	$ 53,294
2003-04	The Stull Act	Ch. 498/83	260	$ 17,141,199	$ 3,626,695	$ 13,514,504	$ -	$ -	$ -	$ 13,514,504
2003-04 Total				**$ 263,239,587**	**$ 64,767,053**	**$ 198,472,534**	**$ 2,756,052**	**$ 857,499**	**$ 1,898,553**	**$ 196,573,981**

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Fiscal Year	Program Name	Legal Reference	Program Number	Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2002-03	Academic Performance Index	Ch. 695/00	305	$ 61,134	$ -	$ 61,134	$ -	$ -	$ -	$ 61,134
2002-03	Agency Fee Arrangements	Ch. 893/00	269	$ 8,599	$ 1,976	$ 6,623	$ -	$ -	$ -	$ 6,623
2002-03	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 39,773	$ -	$ 39,773	$ -	$ -	$ -	$ 39,773
2002-03	Charter Schools III	Ch. 34/98	277	$ 1,180	$ -	$ 1,180	$ -	$ -	$ -	$ 1,180
2002-03	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 30,770,605	$ 30,595,553	$ 175,052	$ 867,444	$ 796,031	$ 71,413	$ 103,639
2002-03	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	$ 3,668	$ -	$ 3,668	$ -	$ -	$ -	$ 3,668
2002-03	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 194,231	$ -	$ 194,231	$ -	$ -	$ -	$ 194,231
2002-03	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 176,597,642	$ 5,767,696	$ 170,829,946	$ -	$ -	$ -	$ 170,829,946
2002-03	Grand Jury Proceedings	Ch. 1170/96	226	$ 73,771	$ 61,567	$ 12,204	$ -	$ -	$ -	$ 12,204
2002-03	High School Exit Examination	Ch. 1/99	268	$ 3,016,345	$ 216,611	$ 2,799,734	$ -	$ -	$ -	$ 2,799,734
2002-03	Intradistrict Attendance	Ch. 161/93	153	$ 7,235,790	$ 7,100,754	$ 135,036	$ 204,853	$ 204,853	$ -	$ 135,036
2002-03	Missing Children Reports	Ch. 249/86	275	$ 1,047	$ -	$ 1,047	$ -	$ -	$ -	$ 1,047
2002-03	Notification of Truancy	Ch. 498/83	48	$ 7,484,519	$ 7,484,519	$ -	$ 895,210	$ 357,099	$ 538,111	$ (538,111)
2002-03	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 7,144,281	$ 3,182,484	$ 3,961,797	$ -	$ -	$ -	$ 3,961,797
2002-03	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 2,711,305	$ 84,178	$ 2,627,127	$ -	$ -	$ -	$ 2,627,127
2002-03	Pupil Health Screenings	Ch. 1208/76	139	$ 3,491,968	$ 3,491,968	$ -	$ 2,397,890	$ -	$ 2,397,890	$ (2,397,890)
2002-03	Pupil Promotion and Retention	Ch. 100/91	244	$ 1,943,938	$ 1,943,938	$ -	$ 25,317,281	$ 2,721,523	$ 22,595,758	$ (22,595,758)
2002-03	Pupil Safety Notices	Ch. 498/83	280	$ 5,874	$ -	$ 5,874	$ -	$ -	$ -	$ 5,874
2002-03	Removal of Chemicals	Ch. 1107/84	57	$ 1,462,432	$ 871,942	$ 590,490	$ -	$ -	$ -	$ 590,490
2002-03	School Bus Safety I and II	Ch. 624/92	184	$ 5,952	$ -	$ 5,952	$ -	$ -	$ -	$ 5,952
2002-03	School Crimes Reporting II	Ch. 1607/84	190	$ 28,400	$ -	$ 28,400	$ -	$ -	$ -	$ 28,400
2002-03	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 774,664	$ 416,834	$ 357,830	$ -	$ -	$ -	$ 357,830
2002-03	Standardized Testing and Reporting	Ch. 828/97	208	$ 25,792,241	$ 10,177,025	$ 15,615,216	$ -	$ -	$ -	$ 15,615,216
2002-03	Student Records	Ch. 593/89	308	$ 38,314	$ -	$ 38,314	$ -	$ -	$ -	$ 38,314
2002-03	The Stull Act	Ch. 498/83	260	$ 16,295,378	$ 3,281,991	$ 13,013,387	$ -	$ -	$ -	$ 13,013,387
2002-03 Total				**$ 285,183,051**	**$ 74,679,036**	**$ 210,504,015**	**$ 29,682,678**	**$ 4,079,506**	**$ 25,603,172**	**$ 184,900,843**
2001-02	Academic Performance Index	Ch. 695/00	305	$ 57,561	$ -	$ 57,561	$ -	$ -	$ -	$ 57,561
2001-02	AIDS Prevention Instruction	Ch. 818/91	123	$ 3,563,107	$ 3,563,107	$ -	$ 838,033	$ 830,151	$ 7,882	$ (7,882)
2001-02	Annual Parent Notification II	Ch. 448/75	189	$ (22,299)	$ (22,299)	$ -	$ 155,672	$ 155,518	$ 154	$ (154)
2001-02	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	$ 33,574	$ 31,669	$ 1,905	$ -	$ -	$ -	$ 1,905
2001-02	Charter Schools	Ch. 781/92	140	$ 2,451,336	$ 2,451,336	$ -	$ 243,611	$ 194,035	$ 49,576	$ (49,576)
2001-02	Charter Schools III	Ch. 34/98	277	$ 1,100	$ -	$ 1,100	$ -	$ -	$ -	$ 1,100
2001-02	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 34,671,017	$ 34,562,519	$ 108,498	$ 7,346,372	$ 7,321,793	$ 24,579	$ 83,919
2001-02	Comprehensive School Safety Plans	Ch. 736/97	223	$ 5,548,278	$ 5,548,278	$ -	$ 14,656	$ 9,604	$ 5,052	$ (5,052)

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				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2001-02	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	$ 6,973	$ -	$ 6,973	$ -	$ -	$ -	$ 6,973
2001-02	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 59,570	$ -	$ 59,570	$ -	$ -	$ -	$ 59,570
2001-02	Criminal Background Checks	Ch. 588/97	183	$ 3,258,459	$ 3,258,459	$ -	$ 2,332,978	$ 2,329,690	$ 3,288	$ (3,288)
2001-02	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	$ 15,787,553	$ 15,787,553	$ -	$ 4,530,020	$ 4,527,017	$ 3,003	$ (3,003)
2001-02	Graduation Requirements	Ch. 498/83	26	$ 7,956,244	$ 7,956,244	$ -	$ 4,861,543	$ 4,579,498	$ 282,045	$ (282,045)
2001-02	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 166,721,546	$ 10,139,372	$ 156,582,174	$ -	$ -	$ -	$ 156,582,174
2001-02	Grand Jury Proceedings	Ch. 1170/96	226	$ 22,713	$ 4,354	$ 18,359	$ -	$ -	$ -	$ 18,359
2001-02	Habitual Truant	Ch. 1184/75	166	$ 7,701,749	$ 7,700,749	$ 1,000	$ 2,062,132	$ 2,061,893	$ 239	$ 761
2001-02	High School Exit Examination	Ch. 1/99	268	$ 2,153,703	$ 126,570	$ 2,027,133	$ -	$ -	$ -	$ 2,027,133
2001-02	Interdistrict Attendance Permits	Ch. 172/86	148	$ 1,807,989	$ 1,807,989	$ -	$ 767,144	$ 766,547	$ 597	$ (597)
2001-02	Intradistrict Attendance	Ch. 161/93	153	$ 8,287,007	$ 8,161,054	$ 125,953	$ 1,427,034	$ 1,424,389	$ 2,645	$ 123,308
2001-02	Juvenile Court Notices II	Ch. 1423/84	155	$ 798,088	$ 798,088	$ -	$ 72,371	$ 72,080	$ 291	$ (291)
2001-02	Law Enforcement Agency Notification	Ch. 1117/89	157	$ 1,579,905	$ 1,579,905	$ -	$ 818,310	$ 816,980	$ 1,330	$ (1,330)
2001-02	Mandate Reimbursement Process	Ch. 486/75	42	$ 18,513,506	$ 18,513,506	$ -	$ 294,483	$ 277,421	$ 17,062	$ (17,062)
2001-02	Open Meetings Act II	Ch. 641/86	201	$ (25,166)	$ (25,166)	$ -	$ 114,615	$ 112,856	$ 1,759	$ (1,759)
2001-02	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 7,324,265	$ 5,578,375	$ 1,745,890	$ 441,130	$ 437,972	$ 3,158	$ 1,742,732
2001-02	Physical Performance Tests	Ch. 975/95	173	$ 2,301,476	$ 2,301,476	$ -	$ 299,866	$ 299,485	$ 381	$ (381)
2001-02	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	$ 2,589,924	$ 2,589,924	$ -	$ 269,837	$ 268,611	$ 1,226	$ (1,226)
2001-02	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 2,441,052	$ 81,273	$ 2,359,779	$ -	$ -	$ -	$ 2,359,779
2001-02	Pupil Health Screenings	Ch. 1208/76	139	$ 4,917,750	$ 4,917,750	$ -	$ 648,062	$ 646,501	$ 1,561	$ (1,561)
2001-02	Pupil Promotion and Retention	Ch. 100/91	244	$ 2,162,205	$ 2,162,205	$ -	$ 13,814,130	$ 654,358	$ 13,159,772	$ (13,159,772)
2001-02	Pupil Safety Notices	Ch. 498/83	280	$ 5,692	$ -	$ 5,692	$ -	$ -	$ -	$ 5,692
2001-02	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	$ 3,499,391	$ 3,499,391	$ -	$ 1,708,202	$ 1,704,261	$ 3,941	$ (3,941)
2001-02	Removal of Chemicals	Ch. 1107/84	57	$ 1,494,853	$ 1,204,975	$ 289,878	$ 548,259	$ 546,569	$ 1,690	$ 288,188
2001-02	School Accountability Report Cards	Ch. 1463/89	171	$ 4,549,931	$ 4,549,931	$ -	$ 420,875	$ 420,292	$ 583	$ (583)
2001-02	School Bus Safety I and II	Ch. 624/92	184	$ 1,197,389	$ 885,728	$ 311,661	$ -	$ -	$ -	$ 311,661
2001-02	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 5,796,730	$ 4,335,729	$ 1,461,001	$ 3,640,851	$ 3,550,983	$ 89,868	$ 1,371,133
2001-02	Schoolsite Discipline Rules	Ch. 87/86	146	$ 1,737,914	$ 1,737,914	$ -	$ 251,028	$ 250,166	$ 862	$ (862)
2001-02	Scoliosis Screening	Ch. 1347/80	58	$ 2,443,018	$ 2,443,018	$ -	$ 348,998	$ 346,049	$ 2,949	$ (2,949)
2001-02	Standardized Testing and Reporting	Ch. 828/97	208	$ 27,646,726	$ 16,734,473	$ 10,912,253	$ 19,552	$ 19,552	$ -	$ 10,912,253
2001-02	Student Records	Ch. 593/89	308	$ 32,464	$ -	$ 32,464	$ -	$ -	$ -	$ 32,464
2001-02	The Stull Act	Ch. 498/83	260	$ 15,629,733	$ 3,129,644	$ 12,500,089	$ -	$ -	$ -	$ 12,500,089
2001-02 Total				**$ 366,704,026**	**$ 178,095,093**	**$ 188,608,933**	**$ 48,289,764**	**$ 34,624,271**	**$ 13,665,493**	**$ 174,943,440**
2000-01	Academic Performance Index	Ch. 695/00	305	$ 51,150	$ -	$ 51,150	$ -	$ -	$ -	$ 51,150
2000-01	Annual Parent Notification II	Ch. 448/75	189	$ 6,343,796	$ 6,340,479	$ 3,317	$ 152,726	$ 152,726	$ -	$ 3,317
2000-01	Charter Schools	Ch. 781/92	140	$ 4,273,117	$ 4,273,117	$ -	$ 84,614	$ 77,063	$ 7,551	$ (7,551)
2000-01	Charter Schools III	Ch. 34/98	277	$ 1,225	$ -	$ 1,225	$ -	$ -	$ -	$ 1,225

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				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2000-01	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 36,980,185	$ 36,729,059	$ 251,126	$ 10,551,511	$ 10,551,511	$ -	$ 251,126
2000-01	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	$ 23,166	$ -	$ 23,166	$ -	$ -	$ -	$ 23,166
2000-01	Criminal Background Checks	Ch. 588/97	183	$ 5,005,596	$ 5,005,596	$ -	$ 743,465	$ 741,868	$ 1,597	$ (1,597)
2000-01	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	$ 19,422,607	$ 19,422,607	$ -	$ 2,606,979	$ 2,603,291	$ 3,688	$ (3,688)
2000-01	Graduation Requirements	Ch. 498/83	26	$ 9,005,836	$ 9,005,836	$ -	$ 6,748,371	$ 6,695,184	$ 53,187	$ (53,187)
2000-01	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 156,351,241	$ 8,200,063	$ 148,151,178	$ -	$ -	$ -	$ 148,151,178
2000-01	Grand Jury Proceedings	Ch. 1170/96	226	$ 5,759	$ 1,214	$ 4,545	$ -	$ -	$ -	$ 4,545
2000-01	Habitual Truant	Ch. 1184/75	166	$ 8,137,633	$ 8,137,633	$ -	$ 2,391,490	$ 2,384,893	$ 6,597	$ (6,597)
2000-01	High School Exit Examination	Ch. 1/99	268	$ 1,045,174	$ 84,334	$ 960,840	$ -	$ -	$ -	$ 960,840
2000-01	Intradistrict Attendance	Ch. 161/93	153	$ 9,807,270	$ 9,408,513	$ 398,757	$ 1,636,613	$ 1,635,432	$ 1,181	$ 397,576
2000-01	Investment Reports	Ch. 783/95	169	$ 231,880	$ 231,880	$ -	$ 56,171	$ 54,892	$ 1,279	$ (1,279)
2000-01	Mandate Reimbursement Process	Ch. 486/75	42	$ 15,900,354	$ 15,900,354	$ -	$ 488,975	$ 483,395	$ 5,580	$ (5,580)
2000-01	Open Meetings Act	Ch. 641/86	92	$ (4,198)	$ (4,198)	$ -	$ 37,398	$ 30,346	$ 7,052	$ (7,052)
2000-01	Open Meetings Act II	Ch. 641/86	201	$ 10,170,474	$ 9,699,375	$ 471,099	$ 124,736	$ 119,796	$ 4,940	$ 466,159
2000-01	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 647,116	$ 371,081	$ 276,035	$ -	$ -	$ -	$ 276,035
2000-01	Physical Performance Tests	Ch. 975/95	173	$ 2,328,246	$ 2,328,246	$ -	$ 237,134	$ 236,756	$ 378	$ (378)
2000-01	Pupil Exclusions	Ch. . 668/78	165	$ 812,312	$ 812,312	$ -	$ 1,646,971	$ 1,646,298	$ 673	$ (673)
2000-01	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 2,328,868	$ 56,896	$ 2,271,972	$ -	$ -	$ -	$ 2,271,972
2000-01	Pupil Health Screenings	Ch. 1208/76	139	$ 5,225,419	$ 5,225,419	$ -	$ 301,477	$ 300,847	$ 630	$ (630)
2000-01	Removal of Chemicals	Ch. 1107/84	57	$ 1,047,563	$ 989,407	$ 58,156	$ 780,671	$ 780,671	$ -	$ 58,156
2000-01	School Bus Safety I and II	Ch. 624/92	184	$ 2,841,930	$ 2,666,619	$ 175,311	$ 2,356	$ 2,356	$ -	$ 175,311
2000-01	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 2,936,742	$ 2,012,319	$ 924,423	$ 4,517,252	$ 4,441,596	$ 75,656	$ 848,767
2000-01	Scoliosis Screening	Ch. 1347/80	58	$ 2,597,375	$ 2,597,375	$ -	$ 227,843	$ 227,326	$ 517	$ (517)
2000-01	Standardized Testing and Reporting	Ch. 828/97	208	$ 23,099,284	$ 19,143,866	$ 3,955,418	$ 883,889	$ 883,889	$ -	$ 3,955,418
2000-01	The Stull Act	Ch. 498/83	260	$ 12,930,375	$ 1,824,537	$ 11,105,838	$ -	$ -	$ -	$ 11,105,838
2000-01 Total				**$ 339,547,495**	**$ 170,463,939**	**$ 169,083,556**	**$ 34,220,642**	**$ 34,050,136**	**$ 170,506**	**$ 168,913,050**
1999-00	Charter Schools	Ch. 781/92	140	$ 3,778,490	$ 3,778,490	$ -	$ 66,628	$ 64,889	$ 1,739	$ (1,739)
1999-00	Charter Schools III	Ch. 34/98	277	$ 1,005	$ -	$ 1,005	$ -	$ -	$ -	$ 1,005
1999-00	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 43,275,122	$ 43,275,122	$ -	$ 5,245,736	$ 5,240,272	$ 5,464	$ (5,464)
1999-00	Graduation Requirements	Ch. 498/83	26	$ 7,457,120	$ 7,457,120	$ -	$ 1,014,331	$ 983,829	$ 30,502	$ (30,502)
1999-00	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 136,355,794	$ 6,689,479	$ 129,666,315	$ -	$ -	$ -	$ 129,666,315
1999-00	Grand Jury Proceedings	Ch. 1170/96	226	$ 2,764	$ -	$ 2,764	$ -	$ -	$ -	$ 2,764
1999-00	Intradistrict Attendance	Ch. 161/93	153	$ 10,821,278	$ 10,624,010	$ 197,268	$ 593,229	$ 593,229	$ -	$ 197,268
1999-00	Mandate Reimbursement Process	Ch. 486/75	42	$ 14,287,192	$ 14,287,192	$ -	$ 111,664	$ 111,537	$ 127	$ (127)
1999-00	Open Meetings Act	Ch. 641/86	92	$ 4,416,671	$ 4,416,671	$ -	$ 67,236	$ 67,019	$ 217	$ (217)
1999-00	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 222,400	$ 169,307	$ 53,093	$ -	$ -	$ -	$ 53,093

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1999-00	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,764,629	$ 58,254	$ 1,706,375	$ -	$ -	$ -	$ 1,706,375
1999-00	Removal of Chemicals	Ch. 1107/84	57	$ 1,287,916	$ 1,282,916	$ 5,000	$ 633,360	$ 633,360	$ -	$ 5,000
1999-00	School Bus Safety	Ch. 624/92	137	$ (1,965)	$ (1,965)	$ -	$ 9,508	$ 9,266	$ 242	$ (242)
1999-00	School Bus Safety I and II	Ch. 624/92	184	$ 3,633,925	$ 3,529,952	$ 103,973	$ 21,765	$ 21,752	$ 13	$ 103,960
1999-00	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 3,808,205	$ 3,289,153	$ 519,052	$ 1,122,365	$ 1,122,365	$ -	$ 519,052
1999-00	Standardized Testing and Reporting	Ch. 828/97	208	$ 24,357,760	$ 19,638,286	$ 4,719,474	$ 441,293	$ 441,293	$ -	$ 4,719,474
1999-00	The Stull Act	Ch. 498/83	260	$ 10,987,978	$ 1,530,117	$ 9,457,861	$ -	$ -	$ -	$ 9,457,861
1999-00 Total				**$ 266,456,284**	**$ 120,024,104**	**$ 146,432,180**	**$ 9,327,115**	**$ 9,288,811**	**$ 38,304**	**$ 146,393,876**
1998-99	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 44,841,220	$ 44,841,220	$ -	$ 4,763,751	$ 4,753,555	$ 10,196	$ (10,196)
1998-99	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 113,120,944	$ 10,905,555	$ 102,215,389	$ -	$ -	$ -	$ 102,215,389
1998-99	Grand Jury Proceedings	Ch. 1170/96	226	$ 6,697	$ -	$ 6,697	$ -	$ -	$ -	$ 6,697
1998-99	Mandate Reimbursement Process	Ch. 486/75	42	$ 11,713,000	$ 11,713,000	$ -	$ 1,237,169	$ 1,236,569	$ 600	$ (600)
1998-99	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 188,974	$ 140,120	$ 48,854	$ -	$ -	$ -	$ 48,854
1998-99	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,996,485	$ 78,291	$ 1,918,194	$ -	$ -	$ -	$ 1,918,194
1998-99	Pupil Promotion and Retention	Ch. 100/91	244	$ 860,408	$ 860,408	$ -	$ 3,186,168	$ 1,769,275	$ 1,416,893	$ (1,416,893)
1998-99	School Accountability Report Cards	Ch. 1463/89	171	$ 2,804,864	$ 2,804,864	$ -	$ 484,721	$ 484,421	$ 300	$ (300)
1998-99	School Bus Safety I and II	Ch. 624/92	184	$ 128,045	$ 127,206	$ 839	$ 21,349	$ 21,349	$ -	$ 839
1998-99	Standardized Testing and Reporting	Ch. 828/97	208	$ 10,514,036	$ 5,535,326	$ 4,978,710	$ 448,830	$ 448,830	$ -	$ 4,978,710
1998-99	The Stull Act	Ch. 498/83	260	$ 8,470,404	$ 1,347,193	$ 7,123,211	$ -	$ -	$ -	$ 7,123,211
1998-99 Total				**$ 194,645,077**	**$ 78,353,183**	**$ 116,291,894**	**$ 10,141,988**	**$ 8,713,999**	**$ 1,427,989**	**$ 114,863,905**
1997-98	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 36,462,408	$ 36,462,408	$ -	$ 6,956,351	$ 6,944,813	$ 11,538	$ (11,538)
1997-98	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	$ 21,038,713	$ 20,874,968	$ 163,745	$ 1,479,796	$ 1,479,331	$ 465	$ 163,280
1997-98	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 104,027,444	$ 5,388,570	$ 98,638,874	$ -	$ -	$ -	$ 98,638,874
1997-98	Grand Jury Proceedings	Ch. 1170/96	226	$ 12,832	$ -	$ 12,832	$ -	$ -	$ -	$ 12,832
1997-98	Interdistrict Attendance Permits	Ch. 172/86	148	$ 1,779,604	$ 1,779,604	$ -	$ 249,145	$ 248,887	$ 258	$ (258)
1997-98	Interdistrict Transfer Requests: Parent's Employment	Ch. 172/86	149	$ 1,090,110	$ 1,090,110	$ -	$ 437,671	$ 436,936	$ 735	$ (735)
1997-98	Open Meetings Act	Ch. 641/86	92	$ 3,396,990	$ 3,396,990	$ -	$ 223,087	$ 220,400	$ 2,687	$ (2,687)
1997-98	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 181,731	$ 143,086	$ 38,645	$ -	$ -	$ -	$ 38,645
1997-98	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,554,418	$ 36,712	$ 1,517,706	$ -	$ -	$ -	$ 1,517,706
1997-98	School Bus Safety I and II	Ch. 624/92	184	$ 133,174	$ 133,050	$ 124	$ 2,452	$ 2,452	$ -	$ 124
1997-98	Standardized Testing and Reporting	Ch. 828/97	208	$ 8,558,530	$ 4,199,178	$ 4,359,352	$ 181,143	$ 181,143	$ -	$ 4,359,352
1997-98	The Stull Act	Ch. 498/83	260	$ 7,592,373	$ 1,612,698	$ 5,979,675	$ -	$ -	$ -	$ 5,979,675
1997-98 Total				**$ 185,828,327**	**$ 75,117,374**	**$ 110,710,953**	**$ 9,529,645**	**$ 9,513,962**	**$ 15,683**	**$ 110,695,270**
1996-97	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 35,731,370	$ 35,731,370	$ -	$ 8,222,200	$ 8,207,235	$ 14,965	$ (14,965)

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
1996-97	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	$ 9,323,864	$ 9,185,547	$ 138,317	$ 465,947	$ 465,947	$ -	$ 138,317
1996-97	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 91,415,568	$ 2,345,578	$ 89,069,990	$ -	$ -	$ -	$ 89,069,990
1996-97	Open Meetings Act	Ch. 641/86	92	$ 2,713,598	$ 2,713,598	$ -	$ 217,201	$ 217,050	$ 151	$ (151)
1996-97	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 169,539	$ 113,805	$ 55,734	$ -	$ -	$ -	$ 55,734
1996-97	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,474,140	$ 25,877	$ 1,448,263	$ -	$ -	$ -	$ 1,448,263
1996-97	School Bus Safety I and II	Ch. 624/92	184	$ 87,816	$ 86,193	$ 1,623	$ -	$ -	$ -	$ 1,623
1996-97	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 5,772,216	$ 5,772,216	$ -	$ 136,699	$ 136,651	$ 48	$ (48)
1996-97	Scoliosis Screening	Ch. 1347/80	58	$ 2,051,761	$ 2,051,761	$ -	$ 64,789	$ 64,485	$ 304	$ (304)
1996-97 Total				**$ 148,739,872**	**$ 58,025,945**	**$ 90,713,927**	**$ 9,106,836**	**$ 9,091,368**	**$ 15,468**	**$ 90,698,459**
1995-96	AIDS Prevention Instruction	Ch. 818/91	123	$ 2,063,016	$ 2,063,016	$ -	$ 691,837	$ 691,774	$ 63	$ (63)
1995-96	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 31,593,705	$ 31,593,705	$ -	$ 9,201,086	$ 9,191,407	$ 9,679	$ (9,679)
1995-96	Credent Monitoring	Ch. 1376/87	79	$ 2,929,406	$ 2,929,406	$ -	$ 60,858	$ 60,790	$ 68	$ (68)
1995-96	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	$ 7,354,211	$ 7,354,211	$ -	$ 62,469	$ 62,179	$ 290	$ (290)
1995-96	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	$ 84,781,284	$ 2,150,637	$ 82,630,647	$ -	$ -	$ -	$ 82,630,647
1995-96	Open Meetings Act	Ch. 641/86	92	$ 1,774,560	$ 1,774,560	$ -	$ 208,523	$ 208,225	$ 298	$ (298)
1995-96	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 160,444	$ 107,574	$ 52,870	$ -	$ -	$ -	$ 52,870
1995-96	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,505,054	$ 32,204	$ 1,472,850	$ -	$ -	$ -	$ 1,472,850
1995-96	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 4,726,009	$ 4,726,009	$ -	$ 86,368	$ 86,324	$ 44	$ (44)
1995-96	School Testing - Physical Fitness	Ch. 1675/84	115	$ 562,926	$ 562,926	$ -	$ 219,834	$ 219,565	$ 269	$ (269)
1995-96 Total				**$ 137,450,615**	**$ 53,294,248**	**$ 84,156,367**	**$ 10,530,975**	**$ 10,520,264**	**$ 10,711**	**$ 84,145,656**
1994-95	Open Meetings Act	Ch. 641/86	92	$ 1,128,612	$ 1,128,612	$ -	$ 2,880	$ 1,950	$ 930	$ (930)
1994-95	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 143,107	$ 93,725	$ 49,382	$ -	$ -	$ -	$ 49,382
1994-95	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	$ 544,631	$ 544,631	$ -	$ 3,055	$ 2,643	$ 412	$ (412)
1994-95	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,394,717	$ 37,648	$ 1,357,069	$ -	$ -	$ -	$ 1,357,069
1994-95	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 4,230,530	$ 4,230,530	$ -	$ 73,525	$ 73,477	$ 48	$ (48)
1994-95 Total				**$ 7,441,597**	**$ 6,035,146**	**$ 1,406,451**	**$ 79,460**	**$ 78,070**	**$ 1,390**	**$ 1,405,061**
1993-94	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 29,969,495	$ 29,969,495	$ -	$ 3,859,762	$ 3,792,203	$ 67,559	$ (67,559)
1993-94	Open Meetings Act	Ch. 641/86	92	$ 748,308	$ 748,308	$ -	$ 551	$ -	$ 551	$ (551)
1993-94	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	$ 44,199	$ 30,996	$ 13,203	$ -	$ -	$ -	$ 13,203
1993-94	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	$ 1,216,367	$ 48,134	$ 1,168,233	$ -	$ -	$ -	$ 1,168,233
1993-94	School District of Choice: Transfers and Appeals	Ch. 160/93	156	$ 2,184,496	$ 2,184,496	$ -	$ 32,867	$ 32,835	$ 32	$ (32)
1993-94 Total				**$ 34,162,865**	**$ 32,981,429**	**$ 1,181,436**	**$ 3,893,180**	**$ 3,825,038**	**$ 68,142**	**$ 1,113,294**
1992-93	Civic Center Act	Ch. 49/84	114	$ 11,846,195	$ 11,846,195	$ -	$ 1,179,938	$ 1,179,552	$ 386	$ (386)

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1992-93	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	$ 29,309,461	$ 29,309,461	$ -	$ 3,004,258	$ 2,983,106	$ 21,152	$ (21,152)
1992-93	Credent Monitoring	Ch. 1376/87	79	$ 1,853,410	$ 1,853,216	$ 194	$ 654,070	$ 649,037	$ 5,033	$ (4,839)
1992-93 Total				**$ 43,009,066**	**$ 43,008,872**	**$ 194**	**$ 4,838,266**	**$ 4,811,695**	**$ 26,571**	**$ (26,378)**
1991-92	Civic Center Act	Ch. 49/84	114	$ 10,650,345	$ 10,650,345	$ -	$ 1,058,329	$ 1,057,915	$ 414	$ (414)
1991-92	Open Meetings Act	Ch. 641/86	92	$ 869,812	$ 869,812	$ -	$ 302,710	$ 302,634	$ 76	$ (76)
1991-92 Total				**$ 11,520,157**	**$ 11,520,157**	**$ -**	**$ 1,361,039**	**$ 1,360,549**	**$ 490**	**$ (490)**
1990-91	Civic Center Act	Ch. 49/84	114	$ 9,961,940	$ 9,961,940	$ -	$ 1,019,995	$ 1,019,595	$ 400	$ (400)
1990-91	Graduation Requirements	Ch. 498/83	26	$ 5,435,894	$ 5,435,894	$ -	$ 2,940,929	$ 2,574,050	$ 366,879	$ (366,879)
1990-91 Total				**$ 15,397,834**	**$ 15,397,834**	**$ -**	**$ 3,960,924**	**$ 3,593,645**	**$ 367,279**	**$ (367,279)**
1989-90	Civic Center Act	Ch. 49/84	114	$ 9,684,270	$ 9,684,270	$ -	$ 954,100	$ 953,623	$ 477	$ (477)
1989-90	Graduation Requirements	Ch. 498/83	26	$ 8,260,170	$ 8,260,170	$ -	$ 611,477	$ 555,788	$ 55,689	$ (55,689)
1989-90 Total				**$ 17,944,440**	**$ 17,944,440**	**$ -**	**$ 1,565,577**	**$ 1,509,411**	**$ 56,166**	**$ (56,166)**
1988-89	Civic Center Act	Ch. 49/84	114	$ 8,195,968	$ 8,195,968	$ -	$ 880,183	$ 879,682	$ 501	$ (501)
1988-89 Total				**$ 8,195,968**	**$ 8,195,968**	**$ -**	**$ 880,183**	**$ 879,682**	**$ 501**	**$ (501)**
1987-88	Civic Center Act	Ch. 49/84	114	$ 8,055,062	$ 8,055,062	$ -	$ 803,598	$ 803,123	$ 475	$ (475)
1987-88 Total				**$ 8,055,062**	**$ 8,055,062**	**$ -**	**$ 803,598**	**$ 803,123**	**$ 475**	**$ (475)**
1986-87	Civic Center Act	Ch. 49/84	114	$ 7,376,797	$ 7,376,797	$ -	$ 727,817	$ 726,898	$ 919	$ (919)
1986-87 Total				**$ 7,376,797**	**$ 7,376,797**	**$ -**	**$ 727,817**	**$ 726,898**	**$ 919**	**$ (919)**
1985-86	Civic Center Act	Ch. 49/84	114	$ 7,513,308	$ 7,513,308	$ -	$ 588,899	$ 588,367	$ 532	$ (532)
1985-86 Total				**$ 7,513,308**	**$ 7,513,308**	**$ -**	**$ 588,899**	**$ 588,367**	**$ 532**	**$ (532)**
Grand Total				**$ 5,167,317,567**	**$ 1,416,030,688**	**$ 3,751,286,879**	**$ 202,703,682**	**$ 152,321,190**	**$ 50,382,492**	**$ 3,700,904,387**

Schedule B4:
Community College Districts

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2010-11	Agency Fee Arrangements	Ch. 893/00	270	$ 38,850	$ 1,000	$ 37,850	$ -	$ -	$ -	$ 37,850
2010-11	California Grants	Ch. 403/00	302	$ 12,150	$ 1,000	$ 11,150	$ -	$ -	$ -	$ 11,150
2010-11	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 36,568	$ 1,000	$ 35,568	$ -	$ -	$ -	$ 35,568
2010-11	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 4,100,167	$ 1,000	$ 4,099,167	$ -	$ -	$ -	$ 4,099,167
2010-11	Enrollment Fee Collection and Waivers	Title 5	267	$ 16,583,065	$ 1,000	$ 16,582,065	$ -	$ -	$ -	$ 16,582,065
2010-11	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 6,148,447	$ 1,000	$ 6,147,447	$ -	$ -	$ -	$ 6,147,447
2010-11	Integrated Waste Management	Ch. 1116/92	256	$ 457,035	$ -	$ 457,035	$ -	$ -	$ -	$ 457,035
2010-11	Mandate Reimbursement Process	Ch. 486/75	237	$ 651,197	$ 1,000	$ 650,197	$ -	$ -	$ -	$ 650,197
2010-11	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,490,985	$ 1,000	$ 1,489,985	$ -	$ -	$ -	$ 1,489,985
2010-11	Prevailing Wage Rate	Ch. 1249/78	303	$ 71,811	$ 1,000	$ 70,811	$ -	$ -	$ -	$ 70,811
2010-11	Tuition Fee Waivers	Ch. 36/77	301	$ 862,092	$ 1,000	$ 861,092	$ -	$ -	$ -	$ 861,092
2010-11 Total				**$ 30,452,367**	**$ 10,000**	**$ 30,442,367**	**$ -**	**$ -**	**$ -**	**$ 30,442,367**
2009-10	California Grants	Ch. 403/00	302	$ 20,636	$ -	$ 20,636	$ -	$ -	$ -	$ 20,636
2009-10	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 4,792,797	$ 444,000	$ 4,348,797	$ -	$ -	$ -	$ 4,348,797
2009-10	Enrollment Fee Collection and Waivers	Title 5	267	$ 21,396,979	$ 2,999,999	$ 18,396,980	$ -	$ -	$ -	$ 18,396,980
2009-10	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 4,395,907	$ 2,573,802	$ 1,822,105	$ 603,794	$ 256,603	$ 347,191	$ 1,474,914
2009-10	Integrated Waste Management	Ch. 1116/92	256	$ 2,211,666	$ -	$ 2,211,666	$ -	$ -	$ -	$ 2,211,666
2009-10	Mandate Reimbursement Process	Ch. 486/75	237	$ 685,092	$ -	$ 685,092	$ -	$ -	$ -	$ 685,092
2009-10	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,405,673	$ -	$ 1,405,673	$ -	$ -	$ -	$ 1,405,673
2009-10	Prevailing Wage Rate	Ch. 1249/78	303	$ 83,173	$ -	$ 83,173	$ -	$ -	$ -	$ 83,173
2009-10	Sexual Assault Response Procedures	Ch. 423/90	247	$ 1,421	$ -	$ 1,421	$ -	$ -	$ -	$ 1,421
2009-10	Student Records	Ch. 593/89	307	$ 1,170	$ -	$ 1,170	$ -	$ -	$ -	$ 1,170
2009-10	Tuition Fee Waivers	Ch. 36/77	301	$ 763,416	$ 13,000	$ 750,416	$ -	$ -	$ -	$ 750,416
2009-10 Total				**$ 35,757,930**	**$ 6,030,801**	**$ 29,727,129**	**$ 603,794**	**$ 256,603**	**$ 347,191**	**$ 29,379,938**
2008-09	California Grants	Ch. 403/00	302	$ 23,555	$ -	$ 23,555	$ -	$ -	$ -	$ 23,555
2008-09	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 5,255,258	$ 602,002	$ 4,653,256	$ -	$ -	$ -	$ 4,653,256
2008-09	Enrollment Fee Collection and Waivers	Title 5	267	$ 26,776,653	$ 3,662,165	$ 23,114,488	$ -	$ -	$ -	$ 23,114,488
2008-09	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 6,006,587	$ 5,583,441	$ 423,146	$ 510,365	$ 381,373	$ 128,992	$ 294,154
2008-09	Integrated Waste Management	Ch. 1116/92	256	$ 6,326,880	$ -	$ 6,326,880	$ -	$ -	$ -	$ 6,326,880
2008-09	Mandate Reimbursement Process	Ch. 486/75	237	$ 775,809	$ 6,395	$ 769,414	$ -	$ -	$ -	$ 769,414
2008-09	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,475,222	$ -	$ 1,475,222	$ -	$ -	$ -	$ 1,475,222
2008-09	Prevailing Wage Rate	Ch. 1249/78	303	$ 63,845	$ -	$ 63,845	$ -	$ -	$ -	$ 63,845
2008-09	Reporting Improper Governmental Activities	Ch. 416/01	294	$ 14,940	$ 14,000	$ 940	$ -	$ -	$ -	$ 940
2008-09	Tuition Fee Waivers	Ch. 36/77	301	$ 642,515	$ -	$ 642,515	$ -	$ -	$ -	$ 642,515
2008-09 Total				**$ 47,361,264**	**$ 9,868,003**	**$ 37,493,261**	**$ 510,365**	**$ 381,373**	**$ 128,992**	**$ 37,364,269**
2007-08	Agency Fee Arrangements	Ch. 893/00	270	$ 107,612	$ 6,763	$ 100,849	$ -	$ -	$ -	$ 100,849
2007-08	California Grants	Ch. 403/00	302	$ 23,844	$ -	$ 23,844	$ -	$ -	$ -	$ 23,844
2007-08	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 65,504	$ -	$ 65,504	$ -	$ -	$ -	$ 65,504
2007-08	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 6,507,511	$ 60,759	$ 6,446,752	$ -	$ -	$ -	$ 6,446,752
2007-08	Enrollment Fee Collection and Waivers	Title 5	267	$ 22,113,234	$ -	$ 22,113,234	$ -	$ -	$ -	$ 22,113,234
2007-08	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 3,811,589	$ 2,049,817	$ 1,761,772	$ 2,070,733	$ 917,501	$ 1,153,232	$ 608,540

State Controller's Office
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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	Net Balance
2007-08	Integrated Waste Management	Ch. 1116/92	256	$ 4,710,636	$ -	$ 4,710,636	$ -	$ -	$ -	$ 4,710,636
2007-08	Mandate Reimbursement Process	Ch. 486/75	237	$ 707,987	$ -	$ 707,987	$ -	$ -	$ -	$ 707,987
2007-08	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,225,722	$ 68,719	$ 1,157,003	$ -	$ -	$ -	$ 1,157,003
2007-08	Prevailing Wage Rate	Ch. 1249/78	303	$ 86,420	$ -	$ 86,420	$ -	$ -	$ -	$ 86,420
2007-08	Reporting Improper Governmental Activities	Ch. 416/01	294	$ 28,548	$ -	$ 28,548	$ -	$ -	$ -	$ 28,548
2007-08	Tuition Fee Waivers	Ch. 36/77	301	$ 827,080	$ -	$ 827,080	$ -	$ -	$ -	$ 827,080
2007-08 Total				**$ 40,215,687**	**$ 2,186,058**	**$ 38,029,629**	**$ 2,070,733**	**$ 917,501**	**$ 1,153,232**	**$ 36,876,397**
2006-07	Agency Fee Arrangements	Ch. 893/00	270	$ 83,423	$ -	$ 83,423	$ -	$ -	$ -	$ 83,423
2006-07	California Grants	Ch. 403/00	302	$ 21,582	$ -	$ 21,582	$ -	$ -	$ -	$ 21,582
2006-07	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 57,897	$ -	$ 57,897	$ -	$ -	$ -	$ 57,897
2006-07	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 6,202,489	$ 153,668	$ 6,048,821	$ -	$ -	$ -	$ 6,048,821
2006-07	Enrollment Fee Collection and Waivers	Title 5	267	$ 15,525,120	$ -	$ 15,525,120	$ -	$ -	$ -	$ 15,525,120
2006-07	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 2,287,353	$ 893,735	$ 1,393,618	$ 3,094,765	$ 2,026,098	$ 1,068,667	$ 324,951
2006-07	Integrated Waste Management	Ch. 1116/92	256	$ 4,154,658	$ -	$ 4,154,658	$ -	$ -	$ -	$ 4,154,658
2006-07	Mandate Reimbursement Process	Ch. 486/75	237	$ 853,887	$ -	$ 853,887	$ -	$ -	$ -	$ 853,887
2006-07	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,150,873	$ 2,083	$ 1,148,790	$ -	$ -	$ -	$ 1,148,790
2006-07	Prevailing Wage Rate	Ch. 1249/78	303	$ 72,835	$ -	$ 72,835	$ -	$ -	$ -	$ 72,835
2006-07	Tuition Fee Waivers	Ch. 36/77	301	$ 821,439	$ -	$ 821,439	$ -	$ -	$ -	$ 821,439
2006-07 Total				**$ 31,231,556**	**$ 1,049,486**	**$ 30,182,070**	**$ 3,094,765**	**$ 2,026,098**	**$ 1,068,667**	**$ 29,113,403**
2005-06	Agency Fee Arrangements	Ch. 893/00	270	$ 48,319	$ -	$ 48,319	$ -	$ -	$ -	$ 48,319
2005-06	California Grants	Ch. 403/00	302	$ 20,617	$ -	$ 20,617	$ -	$ -	$ -	$ 20,617
2005-06	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 55,370	$ -	$ 55,370	$ -	$ -	$ -	$ 55,370
2005-06	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 5,495,764	$ 152,149	$ 5,343,615	$ -	$ -	$ -	$ 5,343,615
2005-06	Enrollment Fee Collection and Waivers	Title 5	267	$ 16,401,242	$ -	$ 16,401,242	$ -	$ -	$ -	$ 16,401,242
2005-06	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 3,207,813	$ 98,174	$ 3,109,639	$ -	$ -	$ -	$ 3,109,639
2005-06	Integrated Waste Management	Ch. 1116/92	256	$ 4,243,528	$ 103,900	$ 4,139,628	$ -	$ -	$ -	$ 4,139,628
2005-06	Mandate Reimbursement Process	Ch. 486/75	237	$ 884,380	$ 884,380	$ -	$ 159,704	$ 145,885	$ 13,819	$ (13,819)
2005-06	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 967,993	$ 62,945	$ 905,048	$ 108,270	$ 105,462	$ 2,808	$ 902,240
2005-06	Prevailing Wage Rate	Ch. 1249/78	303	$ 151,809	$ -	$ 151,809	$ -	$ -	$ -	$ 151,809
2005-06	Tuition Fee Waivers	Ch. 36/77	301	$ 771,160	$ -	$ 771,160	$ -	$ -	$ -	$ 771,160
2005-06 Total				**$ 32,247,995**	**$ 1,301,548**	**$ 30,946,447**	**$ 267,974**	**$ 251,347**	**$ 16,627**	**$ 30,929,820**
2004-05	Agency Fee Arrangements	Ch. 893/00	270	$ 44,561	$ -	$ 44,561	$ -	$ -	$ -	$ 44,561
2004-05	California Grants	Ch. 403/00	302	$ 18,380	$ -	$ 18,380	$ -	$ -	$ -	$ 18,380
2004-05	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 44,826	$ -	$ 44,826	$ -	$ -	$ -	$ 44,826
2004-05	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 7,277,259	$ 1,701,273	$ 5,575,986	$ -	$ -	$ -	$ 5,575,986
2004-05	Enrollment Fee Collection and Waivers	Title 5	267	$ 14,801,946	$ 253,258	$ 14,548,688	$ -	$ -	$ -	$ 14,548,688
2004-05	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 7,032,360	$ 2,651,721	$ 4,380,639	$ -	$ -	$ -	$ 4,380,639
2004-05	Integrated Waste Management	Ch. 1116/92	256	$ 4,155,410	$ 635,895	$ 3,519,515	$ -	$ -	$ -	$ 3,519,515
2004-05	Prevailing Wage Rate	Ch. 1249/78	303	$ 39,068	$ -	$ 39,068	$ -	$ -	$ -	$ 39,068
2004-05	Tuition Fee Waivers	Ch. 36/77	301	$ 678,167	$ -	$ 678,167	$ -	$ -	$ -	$ 678,167
2004-05 Total				**$ 34,091,977**	**$ 5,242,147**	**$ 28,849,830**	**$ -**	**$ -**	**$ -**	**$ 28,849,830**

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2003-04	Agency Fee Arrangements	Ch. 893/00	270	$ 44,823	$ -	$ 44,823	$ -	$ -	$ -	$ 44,823
2003-04	California Grants	Ch. 403/00	302	$ 22,466	$ -	$ 22,466	$ -	$ -	$ -	$ 22,466
2003-04	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	$ 41,545	$ 7,708	$ 33,837	$ -	$ -	$ -	$ 33,837
2003-04	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 7,314,173	$ 4,987,683	$ 2,326,490	$ -	$ -	$ -	$ 2,326,490
2003-04	Enrollment Fee Collection and Waivers	Title 5	267	$ 15,032,652	$ 155,838	$ 14,876,814	$ -	$ -	$ -	$ 14,876,814
2003-04	Integrated Waste Management	Ch. 1116/92	256	$ 3,906,635	$ 509,351	$ 3,397,284	$ -	$ -	$ -	$ 3,397,284
2003-04	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,117,296	$ 1,100,666	$ 16,630	$ -	$ -	$ -	$ 16,630
2003-04	Prevailing Wage Rate	Ch. 1249/78	303	$ 28,285	$ -	$ 28,285	$ -	$ -	$ -	$ 28,285
2003-04	Tuition Fee Waivers	Ch. 36/77	301	$ 629,328	$ -	$ 629,328	$ -	$ -	$ -	$ 629,328
2003-04 Total				**$ 28,137,203**	**$ 6,761,246**	**$ 21,375,957**	**$ -**	**$ -**	**$ -**	**$ 21,375,957**
2002-03	Agency Fee Arrangements	Ch. 893/00	270	$ 48,740	$ 30,019	$ 18,721	$ -	$ -	$ -	$ 18,721
2002-03	California Grants	Ch. 403/00	302	$ 22,639	$ 3,596	$ 19,043	$ -	$ -	$ -	$ 19,043
2002-03	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 7,694,198	$ 7,694,198	$ -	$ 595,489	$ 374,750	$ 220,739	$ (220,739)
2002-03	Enrollment Fee Collection and Waivers	Title 5	267	$ 16,695,150	$ 1,706,789	$ 14,988,361	$ -	$ -	$ -	$ 14,988,361
2002-03	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 5,382,514	$ 5,382,514	$ -	$ 3,547,273	$ 2,826,984	$ 720,289	$ (720,289)
2002-03	Integrated Waste Management	Ch. 1116/92	256	$ 3,290,939	$ 990,446	$ 2,300,493	$ 118,804	$ 30,280	$ 88,524	$ 2,211,969
2002-03	Tuition Fee Waivers	Ch. 36/77	301	$ 571,497	$ -	$ 571,497	$ -	$ -	$ -	$ 571,497
2002-03 Total				**$ 33,705,677**	**$ 15,807,562**	**$ 17,898,115**	**$ 4,261,566**	**$ 3,232,014**	**$ 1,029,552**	**$ 16,868,563**
2001-02	California Grants	Ch. 403/00	302	$ 14,368	$ 2,880	$ 11,488	$ -	$ -	$ -	$ 11,488
2001-02	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 8,269,673	$ 8,269,673	$ -	$ 964,882	$ 940,305	$ 24,577	$ (24,577)
2001-02	Enrollment Fee Collection and Waivers	Title 5	267	$ 15,216,582	$ 352,300	$ 14,864,282	$ -	$ -	$ -	$ 14,864,282
2001-02	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	$ 4,840,765	$ 4,840,765	$ -	$ 1,190,648	$ 1,045,133	$ 145,515	$ (145,515)
2001-02	Integrated Waste Management	Ch. 1116/92	256	$ 3,063,590	$ 932,371	$ 2,131,219	$ 71,339	$ 36,921	$ 34,418	$ 2,096,801
2001-02	Tuition Fee Waivers	Ch. 36/77	301	$ 475,140	$ -	$ 475,140	$ -	$ -	$ -	$ 475,140
2001-02 Total				**$ 31,880,118**	**$ 14,397,989**	**$ 17,482,129**	**$ 2,226,869**	**$ 2,022,359**	**$ 204,510**	**$ 17,277,619**
2000-01	Enrollment Fee Collection and Waivers	Title 5	267	$ 13,674,783	$ 212,641	$ 13,462,142	$ -	$ -	$ -	$ 13,462,142
2000-01	Integrated Waste Management	Ch. 1116/92	256	$ 1,155,500	$ 250,487	$ 905,013	$ -	$ -	$ -	$ 905,013
2000-01 Total				**$ 14,830,283**	**$ 463,128**	**$ 14,367,155**	**$ -**	**$ -**	**$ -**	**$ 14,367,155**
1999-00	Enrollment Fee Collection and Waivers	Title 5	267	$ 12,133,039	$ 172,387	$ 11,960,652	$ -	$ -	$ -	$ 11,960,652
1999-00	Integrated Waste Management	Ch. 1116/92	256	$ 692,945	$ 111,750	$ 581,195	$ -	$ -	$ -	$ 581,195
1999-00	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 239,700	$ 228,223	$ 11,477	$ 46,320	$ 46,320	$ -	$ 11,477
1999-00 Total				**$ 13,065,684**	**$ 512,360**	**$ 12,553,324**	**$ 46,320**	**$ 46,320**	**$ -**	**$ 12,553,324**
1998-99	Enrollment Fee Collection and Waivers	Title 5	267	$ 9,535,087	$ 1,229,718	$ 8,305,369	$ -	$ -	$ -	$ 8,305,369
1998-99	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 16,407	$ -	$ 16,407	$ -	$ -	$ -	$ 16,407
1998-99 Total				**$ 9,551,494**	**$ 1,229,718**	**$ 8,321,776**	**$ -**	**$ -**	**$ -**	**$ 8,321,776**
1997-98	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	$ 1,452,917	$ 1,452,917	$ -	$ 550,342	$ 546,642	$ 3,700	$ (3,700)
1997-98	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 16,900	$ -	$ 16,900	$ -	$ -	$ -	$ 16,900
1997-98 Total				**$ 1,469,817**	**$ 1,452,917**	**$ 16,900**	**$ 550,342**	**$ 546,642**	**$ 3,700**	**$ 13,200**
1996-97	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 18,586	$ -	$ 18,586	$ -	$ -	$ -	$ 18,586
1996-97 Total				**$ 18,586**	**$ -**	**$ 18,586**	**$ -**	**$ -**	**$ -**	**$ 18,586**
1995-96	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 17,217	$ -	$ 17,217	$ -	$ -	$ -	$ 17,217

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Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1995-96 Total				**$ 17,217**	**$ -**	**$ 17,217**	**$ -**	**$ -**	**$ -**	**$ 17,217**
1994-95	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 13,033	$ -	$ 13,033	$ -	$ -	$ -	$ 13,033
1994-95 Total				**$ 13,033**	**$ -**	**$ 13,033**	**$ -**	**$ -**	**$ -**	**$ 13,033**
1993-94	Open Meetings/Brown Act Reform	Ch. 641/86	238	$ 1,352	$ -	$ 1,352	$ -	$ -	$ -	$ 1,352
1993-94 Total				**$ 1,352**	**$ -**	**$ 1,352**	**$ -**	**$ -**	**$ -**	**$ 1,352**
Grand Total				**$ 384,049,240**	**$ 66,312,963**	**$ 317,736,277**	**$ 13,632,728**	**$ 9,680,257**	**$ 3,952,471**	**$ 313,783,806**

Schedule C:
List of Incorrect Reduction Claims
Filed with the Commission on State Mandates

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
1		02-9635802-I-03	9/6/02	7/23/03*	City of Pleasanton	1995-1996, 1996-1997, 1997-1998	$15,000	Investment Reports	Local
2		02-9635802-I-04	9/6/02	7/22/03*	City of Sunnyvale	1995-1996, 1996-1997, 1997-1998	$43,978	Investment Reports	Local
3		02-9635802-I-05	9/6/02	7/7/03*	County of Santa Barbara	1995-1996, 1996-1997, 1997-1998	$41,308	Investment Reports	Local
4		02-9635802-I-06	9/6/02	8/21/03*	City of Hayward	1995 -1996, 1996-1997, 1997-1998	$55,732	Investment Reports	Local
5		02-9635802-I-07	9/6/02	8/21/03*	City of Oakland	1995 -1996, 1996-1997, 1997-1998	$122,530	Investment Reports	Local
6		02-9635802-I-09	9/6/02	5/9/05 (C) 8/21/03 (SCO)	City of Redwood City	1995-1996, 1996-1997, 1997-1998	$15,755	Investment Reports	Local
7		02-9635802-I-10	9/6/02	8/21/03 (SCO) 6/3/04 (C)	City of San Bernardino	1995-1996, 1996-1997, 1997-1998	$10,083	Investment Reports	Local
8		02-9635802-I-12	9/6/02	5/9/05 (C) 7/14/03 (SCO)	City of Santa Clara	1995-1996, 1996-1997, 1997-1998	$47,125	Investment Reports	Local
9		02-9635802-I-14	9/6/02	7/16/03*	County of Plumas	1995-1996, 1996-1997, 1997-1998	$34,166	Investment Reports	Local
10		02-9635802-I-17	9/6/02	7/14/03*	City of Santa Barbara	1995-1996, 1996-1997, 1997-1998	$49,049	Investment Reports	Local
11		02-9635802-I-18	9/17/02	7/27/03*	County of Kern	1995-1996, 1997-1998	$57,160	Investment Reports	Local
12		02-9635802-I-19	9/19/02	7/16/03*	County of Glenn	1995-1996, 1997-1998	$20,332	Investment Reports	Local
13		02-9635802-I-20	9/19/02	7/14/03*	City of Huntington Beach	1995-1996, 1996-1997	$21,578	Investment Reports	Local
14		02-9635802-I-22	9/19/02	8/20/04 (C) 7/21/03 (SCO)	City of Redding	1995-1996, 1996-1997	$13,756	Investment Reports	Local
15		02-9635802-I-23	9/19/02	6/3/04 (C) 7/21/03 (SCO)	City of West Covina	1995-1996, 1996-1997	$10,380	Investment Reports	Local
16		02-9635802-I-24	9/19/02	6/3/04 (C)	City of Cerritos	1995-1996, 1996-1997	$26,983	Investment Reports	Local
17		02-9635802-I-25	9/19/02	6/29/04 (C) 7/21/03 (SCO)	City of Irvine	1995-1996, 1996-1997	$82,486	Investment Reports	Local
18		02-9635802-I-27	9/19/02	7/16/03*	County of Marin	1995-1996, 1997-1998,	$54,004	Investment Reports	Local
19		02-9635802-I-29	9/19/02	5/9/05 (C) 5/25/03 (SCO)	County of Nevada	1995-1996, 1997-1998	$30,755	Investment Reports	Local
20		02-9635802-I-30	9/30/02	7/16/03*	County of Riverside	1995-1996, 1997-1998	$70,510	Investment Reports	Local
21		02-9635802-I-32	9/30/02	3/11/04 (C) 7/23/03(SCO)	City of Visalia	1995-1996, 1996-1997	$26,617	Investment Reports	Local
22		02-9635802-I-34	10/11/02	1/30/04 (c) 7/23/03 (SCO)	City of Milpitas	1995-1996, 1996-1997	$11,129	Investment Reports	Local
23		02-9635802-I-36	10/11/02	1/30/04 (C) 8/18/03 (SCO)	City of Rialto	1995-1996, 1997-1998	$48,743	Investment Reports	Local
24		02-9635802-I-38	10/11/02	2/17/04 (C) 8/18/03 (SCO)	City of Upland	1995-1996, 1997-1998	$53,160	Investment Reports	Local
25		02-9635802-I-42	10/11/02	1/30/04 (C) 8/11/03 (SCO)	City of Bell Gardens	1995-1996, 1997-1998	$78,938	Investment Reports	Local

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#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
26		02-9635802-I-44	10/11/02	1/20/04 (C) 8/11/03 (SCO)	City of Rancho Cucamonga	1995-1996, 1997-1998	$96,502	Investment Reports	Local
27		02-9635802-I-48	10/11/02	8/14/03*	City of Costa Mesa	1995-1996, 1997-1998	$68,546	Investment Reports	Local
28		02-9635802-I-49	10/11/02	1/22/04 (C) 8/14/03 (SCO)	City of Norwalk	1995-1996, 1997-1998	$56,055	Investment Reports	Local
29		02-9635802-I-50	10/16/02	8/5/03 (C) 6/27/03 (SCO)	City Of Lodi	1995-1996, 1996-1997, 1998-1999	$17,496	Investment Reports	Local
30		02-9635802-I-52	10/16/02	8/5/03 (C) 6/30/03 (SCO)	City Of Walnut Creek	1995-1996, 1996-1997, 1998-1999	$48,107	Investment Reports	Local
31		02-9635802-I-53	10/16/02	9/7/05 (C) 7/31/03 (SCO)	City Of South Lake Tahoe	1995-1996, 1996-1997	$3,683	Investment Reports	Local
32		02-9635802-I-54	10/16/02	8/5/05 (C) 6/25/03 (SCO)	City Of San Carlos	1995-1996, 1996-1997, 1998-1999	$19,992	Investment Reports	Local
33		02-9635802-I-55	10/16/02	8/2/03 (C) 7/31/03 (SCO)	City Of Reedley	1995-1996	$2,167	Investment Reports	Local
34		02-9635802-I-56	10/16/02	9/2/03 (C) 7/31/03 (SCO)	City Of Pleasant Hill	1995-1996	$1,814	Investment Reports	Local
35		02-9635802-I-57	10/16/02	9/2/03 (C) 7/31/03 (SCO)	City Of Albany	1996-1997	$5,397	Investment Reports	Local
36		02-9635802-I-58	10/16/02	8/5/03 (C) 6/27/03 (SCO)	City Of Concord	1995-1996, 1996-1997	$3,203	Investment Reports	Local
37		02-9635802-I-61	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Patterson	1995-1996	$914	Investment Reports	Local
38		02-9635802-I-62	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Lathrop	1995-1996, 1996-1997	$7,003	Investment Reports	Local
39		02-9635802-I-63	10/16/02	8/5/03 (C) 7/25/03 (SCO)	City Of Monterey	1995-1996, 1996-1997, 1998-1999	$10,576	Investment Reports	Local
40		02-9635802-I-64	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Gilroy	1995-1996	$12,810	Investment Reports	Local
41		02-9635802-I-65	10/16/02	8/5/03 (C) 6/25/03 (SCO)	City Of Hanford	1995-1996, 1996-1997, 1998-1999	$7,935	Investment Reports	Local
42		02-9635802-I-66	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Antioch	1995-1996	$4,494	Investment Reports	Local
43		02-9635802-I-67	10/16/02	8/5/03 (C) 6/23/03 (SCO)	City Of Stockton	1995-1996, 1996-1997, 1998-1999	$30,048	Investment Reports	Local
44		02-9635802-I-68	10/16/02	8/5/03 (C) 6/25/03 (SCO)	City Of Turlock	1995-1996, 1996-1997, 1998-1999	$11,877	Investment Reports	Local
45		02-9635802-I-69	10/16/02	No Comments	City Of San Mateo	1995-1996, 1996-1997, 1998-1999	$29,810	Investment Reports	Local
46		02-9635802-I-70	10/16/02	7/7/03 (SCO)	City of Coachella	1996-1997	$2,112	Investment Reports	Local
47		02-9635802-I-71	10/16/02	7/3/03 (C)	City Of Menlo Park	1995-1996, 1996-1997	$20,283	Investment Reports	Local
48		02-9635802-I-72	10/17/02	2/23/04 (C) 6/23/03 (SCO)	City Of San Marcos	1995-1996, 1996-1997	$4,767	Investment Reports	Local
49		02-9635802-I-73	10/17/02	2/9/04 (C) 6/23/03 (SCO)	City Of Santa Ana	1996-1997	$16,535	Investment Reports	Local

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#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
50		04-4241-I-01	4/13/05	10/17/05*	San Diego Unified School District	2001-2002, 2002-2003	$1,203,208	Emergency Procedures, Earthquake Procedures, and Disasters	School
51		04-4257-I-367	5/16/05	4/24/08*	County of Santa Clara	1999-2000, 2000-2001, 2001-2002	$4,653,917	Open Meetings	Local
52	R	04-904133-I-01 Revised 07-904133-I-04	6/27/05	No Comments	Sweetwater Union High School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
53		05-4206-I-03	9/6/05	12/16/08 (SCO) 8/11/09 (C)	Long Beach Community College District	2001-2002, 2002-2003	$466,629	Health Fee Elimination	CCD
54		05-4206-I-04	9/6/05	4/24/08 (SCO) 7/15/09 (C)	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	$1,017,386	Health Fee Elimination	CCD
55		05-4206-I-05	9/6/05	02/11/08 (SCO)	State Center Community College District	1999-2000, 2000-2001, 2001-2002	$887,665	Health Fee Elimination	CCD
56		05-4206-I-06	9/9/05	3/12/08 (SCO) 6/9/09 (C)	Los Rios Community College District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002	$3,205,600	Health Fee Elimination	CCD
57		05-4206-I-07	9/9/05	3/24/08 (SCO) 5/12/09 (C)	Glendale Community College District	2000-2001, 2001-2002	$131,047	Health Fee Elimination	CCD
58		05-4206-I-08	9/15/05	1/7/08*	San Bernardino Community College District	2001-2002, 2002-2003	$610,323	Health Fee Elimination	CCD
59		05-4206-I-09	9/15/05	4/24/08 (SCO) 5/12/09 (C)	North Orange County Community College District	2001-2002, 2002-2003	$346,582	Health Fee Elimination	CCD
60		05-4206-I-10	9/15/05	3/12/08 (SCO) 7/13/09 (C)	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	$1,817,357	Health Fee Elimination	CCD
61		05-4206-I-11	3/27/06	11/24/08 (SCO) 8/11/09 (C)	El Camino Community College District	2000-2001, 2001-2002, 2002-2003	$399,891	Health Fee Elimination	CCD
62		05-4206-I-12	6/16/06	12/23/08*	Santa Monica Community College District	2001-2002, 2002-2003	$364,407	Health Fee Elimination	CCD
63		05-4241-I-06	11/10/05	3/12/08 (SCO) 9/3/09 (C)	Poway Unified School District	2000-2001, 2001-2002, 2002-2003	$738,364	Emergency Procedures, Earthquake Procedures, and Disasters	School
64		05-4282-I-03	5/25/06	6/3/09 (SCO) 3/15/10 (C)	County of San Mateo	1996-1997, 1997-1998, 1998-1999	$3,232,423	Handicapped and Disabled Students	Local
65		05-4425-I-09	9/6/05	No Comments	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	$735,450	Collective Bargaining	CCD
66		05-4425-I-10	9/19/05	3/10/08 (SCO) 8/24/09 (C)	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	$448,696	Collective Bargaining	CCD
67		05-4425-I-11	12/19/05	3/23/10 (SCO)	Gavilan Joint Community College District	1995-1996	$124,245	Collective Bargaining	CCD
68		05-4435-I-50	9/6/05	10/11/07 (SCO) 11/5/07 (C)	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	$8,053,485	Graduation Requirements	School
69		05-4452-I-01	6/26/06	No Comments	San Diego Unified School District	2001-2002, 2002-2003	$354,046	Notification to Teachers: Pupils Subject to Suspension or Expulsion	School
70		05-4485-I-03	9/9/05	2/11/08*	Los Rios Community College District	1999-2000, 2000-2001	$10,004	Mandate Reimbursement Process	CCD
71		05-904133-I-02	12/12/05	No Comments	Los Angeles Unified School District	1998-1999, 1999-2000, 2000-2001	$2,352,507	Notification of Truancy	School

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#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
72	R	05-904133-I-03 Revised 08-904133-I-06 & 10-904133-I-08	6/16/06	No Comments	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
73		06-4206-I-13	7/3/06	1/7/08*	Pasadena Area Community College District	1999-2000, 2000-2001, 2001-2002	$375,941	Health Fee Elimination	CCD
74		06-4509-I-01	11/22/06	No Comments	County of Santa Cruz	1999-2000, 2000-2001, 2001-2002	$173,280	Sexually Violent Predators	Local
75		07-3713-I-02	7/25/07	3/15/10 (SCO)	Santa Clara County	2000-2001, 2001-2002, 2002-2003	$19,284	Absentee Ballots	Local
76		07-4206-I-14	8/14/07	3/15/10 (SCO)	Pasadena Area Community College District	2002-2003, 2003-2004	$192,755	Health Fee Elimination	CCD
77		07-4206-I-15	10/2/07	No Comments	Rancho Santiago Community College District	2000-2001, 2001-2002, and 2002-2003	$1,319,583	Health Fee Elimination	CCD
78		07-4206-I-16	10/11/07	3/15/10 (SCO)	Sierra Joint Community College District	2001-2002, 2002-2003, and 2003-2004	$560,846	Health Fee Elimination	CCD
79		07-4442-I-01	7/26/07	No Comments	San Diego County Office of Education	2004-2005, 2005-2006	$13,353	Interdistrict Attendance Permits	School
80		07-4509-I-02	7/25/07	No Comments	Santa Clara County	1998-1999, 1999-2000, 2000-2001	$203,363	Sexually Violent Predators	Local
81		07-904133-I-04 (Revised) Consolidated with 04-904133-I-01	10/5/07	No Comments	Sweetwater Union High School District	1999-2000, 2000-2001, and 2001-2002	$49,949	Notification of Truancy (Revised)	School
82		07-9628101-I-01	8/15/07	No Comments	County of Santa Clara	1998-1999, 1999-2000, 2000-2001	$748,675	Domestic Violence Treatment Services	Local
83	R	07-904133-I-05 Revised 10-904133-I-07	12/18/07	No Comments	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002		Notification of Truancy (Revised)	School
84		08-4206-I-17	2/5/09	No Comments	Santa Monica Community College District	2003-2004; 2004-2005; 2005-2006	$795,942	Health Fee Elimination	CCD
85		08-4206-I-18	2/5/09	No Comments	Los Rios Community College District	2002-2003; 2003-2004; 2004-2005	$2,554,615	Health Fee Elimination	CCD
86		08-4237-I-02	1/28/09	No Comments	County of Santa Clara	1999-2000; 2000-2001; 2001-2002	$1,268,210	Child Abduction and Recovery Program	Local
87		08-4425-I-15	7/22/08	No Comments	Contra Costa Community College District	2001-2002; 2002-2003; 2003-2004	$494,564	Collective Bargaining	CCD
88		08-4425-I-16	2/5/09	No Comments	Los Rios Community College District	2001-2002; 2002-2003; 2003-2004	$286,895	Collective Bargaining	CCD
89		08-4435-I-52	8/4/08	No Comments	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	$8,053,465	Graduation Requirements	School
90	R	08-904133-I-06 (Revised) Consolidated with 05-904133-I-03 & 10-	8/26/08	No Comments	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
91		08-9723-I-01	5/21/09	No Comments	Sweet water Union High School District	2004-2005 and 2005-2006	$160,120	National Norm-Referenced Achievement Test (NNRAT)	School
92		08-9723-I-02	5/21/09	No Comments	Sweetwater Union High School District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003 2003-2004	$1,446,786	Standardized Testing and Reporting (STAR)	School
93		09-4081-I-01	1/14/10	No comments	City of Los Angeles	2003-2004	$516,132	Firefighter's Cancer Presumption	Local

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#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
94	R	09-4206-I-21 Revised 10-4206-I-36	9/25/09	No comments	Kern Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007		Health Fee Elimination (Revised)	CCD
95		09-4206-I-22	9/25/09	No comments	Long Beach Community College District	2003-2004, 2004-2005, 2005-2006	$676,727	Health Fee Elimination	CCD
96		09-4206-I-24	10/5/09	No comments	Foothill-De Anza Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$440,752	Health Fee Elimination	CCD
97		09-4206-I-25	10/5/09	No Comments	Yosemite Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$451, 873	Health Fee Elimination	CCD
98		09-4206-I-29	6/15/10	No Comments	San Diego Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$379,946	Health Fee Elimination	CCD
99		09-4425-I-17	8/4/09	No comments	Sierra Joint Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$17,971	Collective Bargaining	CCD
100		09-4442-I-02	6/29/10	No Comments	San Diego County Office of Education	2006-2007; 2007-2008	$11,203	Interdistrict Attendance Permits	School
101		10-4206-I-31	7/16/10	No Comments	San Bernardino Community College District	2003-2004; 2004-2005; 2005-2006; 2006-2007	$895,614	Health Fee Elimination	CCD
102		10-4206-I-32	9/1/10	No Comments	State Center Community College District	2002-2003, 2003-2004, 2005-2006, 2006-2007	$902,744	Health Fee Elimination	CCD
103		10-4206-I-33	10/26/10	No Comments	El Camino Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$674,212	Health Fee Elimination	CCD
104		10-4206-I-34	11/22/10	No Comments	Foothill-De Anza Community College District	2002-2003, 2003-2004, 2004-2005	$284,615	Health Fee Elimination	CCD
105		10-4206-I-35	11/29/10	No Comments	San Mateo County Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	$781,934	Health Fee Elimination	CCD
106		10-4206-I-36 (Revised) Consolidated with 09-4206-I-21	12/9/10	No Comments	Kern Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$762,882	Health Fee Elimination	CCD
107		10-4425-I-18	2/4/11	No Comments	Sierra Joint Community College District	2002-2003	$12,116	Collective Bargaining	CCD
108		10-4499-I-01	9/16/10	No Comments	County of Santa Clara	2003-2004, 2004-2005, 2005-2006	$526,802	Peace Officers Bill of Rights (POBOR)	Local
109		10-904133-I-07 (Revised) Consolidated with 07-	7/16/10	No Comments	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002	$87,312	Notification of Truancy (Revised)	School
110		10-904133-I-08 (Revised) Consolidated with 05-904133-I-03 & 08-904133-I-06	9/13/10	No Comments	Riverside Unified School District	2000-2001, 2001-2002	$298,282	Notification of Truancy (2nd Revised)	School
111		10-904133-I-09	10/6/10	No Comments	San Juan Unified School District	2002-2003, 2003-2004, 2004-2005, 2005-2006	$132,847	Notification of Truancy	School
112		10-904133-I-10	11/1/10	No Comments	Riverside Unified School District	2003-2004, 2004-2005, 2005-2006, 2006-2007	$326,088	Notification of Truancy	School
113		10-9705-I-01	11/10/10	No Comments	County of San Diego	2001-2002, 2002-2003, 2003-2004, 2004-2005	$1,979,388	Seriously Emotionally Distrubed Pupils (SEDS): Out-of-State Mental Health Services	Local

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#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
114		11-4451-I-05	7/29/11	No Comments	Chula Vista Elementary School District	1997-1998	$25,081	School District of Choice: Transfers and Appeals	School
115		11-9705-I-02	11/9/11	No Comments	County of Orange	2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006	$2,973,826	Seriously Emotionally Distrubed Pupils (SEDS): Out-of-State Mental Health Services	Local
116		11-9811-I-01	3/8/12	No Comments	City of Hayward	1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2005-2006, 2006-2007, 2007-2008	$1,339,152	Animal Adoption	Local
							$65,439,867		

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Welfare and Institutions Sections 6250 and 6600 Through 6608, Chapter 762, Statutes of 1995, Chapter 763, Statutes of 1995, Chapter 4, Statutes of 1996 By the County of Los Angeles	NO. CSM – 4509 *Sexually Violent Predators* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on June 25, 1998.

This Decision shall become effective on June 25, 1998.

Paula Higashi

PAULA HIGASHI, Executive Director

Adopted: June 25, 1998
File Number: CSM 4509
f:\Mandates\camille\4509\propsod.doc
Document Date: June 12, 1998

ITEM # 4

PROPOSED STATEMENT OF DECISION

Welfare and Institutions Sections 6250 and 6600 through 6608
Chapter 762, Statutes of 1995
Chapter 763, Statutes of 1995
Chapter 4, Statutes of 1996
County of Los Angeles, Claimant

Sexually Violent Predators

Executive Summary

On May 28, 1998, the Cornmission approved this test claim with a 7-O vote.

The test claim legislation establishes *new* civil commitment procedures for the continued detention and treatment of sexually violent predators following completion of 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 inrnate 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.

The Commission found that the test claim legislation imposes a new program upon counties since the procedures to commit the sexually violent predator are civil, rather than criminal, and is not within the county's preexisting duty to prosecute crime.

The Cornrnission also recognized that the 6th and 14th Amendments of the U.S. Constitution provide that an indigent accused has the right to counsel and expert services necessary to prepare the defense at public expense.

Nonetheless, the Commission found that the test claim legislation is mandated by the state. There is no federal statutory or regulatory scheme requiring the states to keep sexually violent predators confined. The Commission recognized that what sets the 6th and 14th Amendments in motion and causes the public defender to safeguard the rights of the indigent defendant, is the state's enactment of the sexually violent predator legislation. If the state had not created this program, inmates would be released following completion of their prison term, counties would not be compelled to initiate these proceedings and services from defense counsel and experts would not have to be provided to indigent inmates.

Accordingly, the Cornmission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Commission **approved** the test claim for reimbursement of the following activities:

- 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, subd. (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, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- 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, subds. (b) through (d), and 6608, subds. (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, subd. (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 .)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

Staff Recommendation

Based on the foregoing, staff recommends that the Cornmission approve the attached Proposed Statement of Decision which accurately reflects the Commission's decision to approve this test claim.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Welfare and Institutions Code Sections 6250 and 6600 through 6608 as added by Chapter 762, Statutes of 1995, Chapter 763, Statutes of 1995, and Chapter 4, Statutes of 1996 And filed on May 30, 1996; By the County of Los Angeles, Claimant.	NO. CSM - 4509 *SEXUALLY VIOLENT PREDATORS* PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (Presented for adoption on June 25, 1998)

PROPOSED STATEMENT OF DECISION

The Cornmission on State Mandates (Connnission) on May 28, 1998 heard this test claim, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Ms. Marsha A. Bedwell, Deputy Attorney General, represented the Department of Finance, and Mr. James Apps appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Mr. Robert Kalunian, Mr. John Vacca, Mr. Kent Cahill, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

The Commission, by a vote of 7 to 0, approved this test claim.

BACKGROUND

In 1995, the Legislature established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison terrn for certain sex-related offenses through the enactment of Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996.

Section 1 of Chapter 763, Statutes of 1995, reveals the intent of the test claim legislation as follows:

> "The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and *not for any punitive purposes.* " (Emphasis added .)

A sexually violent predator is defined as (1) a person who has been convicted of a sexually violent offense against two or more victims, (2) who has received a deterrninate sentence for the offense, and (3) who has a diagnosed mental disorder that makes the person a danger to others in that it is likely he or she will engage in sexually violent criminal behavior. (Welf. & Inst., Code § 6600.)[1]

Section 6601, subdivisions (a) through (h) [2], establishes the process by which the state (through the Department of Corrections, the Board of Prison Terms, and the Department of Mental Health) screens individuals in custody at least six months prior to release for a sex-related offense and determines whether such individuals are sexually violent predators. If the state determines that such individuals are potential sexually violent predators during the screening process, the state may petition the appropriate county for commitment.

Section 6601, subdivision (h), provides the following:

> "(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this

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[1] After this test claim was filed, Article 4 of the Welfare and Institutions Code was amended by Chapters 461 and 462, Statutes of 1996. These chapters expanded the class of potential sexually violent predators by including those persons who (1) were found not guilty by reason of insanity for a sexually violent offense, (2) were convicted of a sexually violent offense in another state even if a determinate sentence was not imposed, and (3) were convicted of a sexually violent offense against a victim under the age of 14 and the offending act involved substantial sexual conduct, as specified. (Welf. & Inst. Code, §§ 6600, subd. (a), and 6600.1.) Chapters 461 and 462 are *not* included in the test claim. Accordingly, reimbursement is not required for the class of persons identified above. (However, if the claimant amends this test claim, or files a new test claim on these chapters, on or before December 3 1, 1998, then the eligible reimbursement period for Chapters 461 and 462 would commence on July 1, 1997. (Gov. Code, § 17557, subd. (c).)

[2] Unless otherwise noted, all references are to the Welfare and Institutions Code.

> article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the *attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.* "[3] (Emphasis added.)

Once the state requests that a petition be filed, either the district attorney or the county counsel (as designated by the county Board of Supervisors) reviews the records and reports forwarded by the state to determine if they concur with the state's recommendation. If the county's designated counsel concurs that the person is a sexually violent predator, the county's designated counsel *must* file a petition for commitment in the superior court. Section 6601, subdivision (i) , specifically provides :

> "(i) if the *county 's designated counsel* concurs with the recommendation, a petition for commitment *shall* be filed in the superior court of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The petition shall be filed, and either the district attorney or the county counsel of that county shall handle the proceedings. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article. " (Emphasis added.)

Once a petition for commitment is filed with the superior court, the court reviews the petition to determine if probable cause exists that the inmate is likely to engage in sexually violent predatory behavior upon release. Pursuant to section 6602, a probable cause hearing is conducted and the inmate *"shall be entitled to the assistance **of counsel** "* during the hearing. If the court finds that there is probable cause, the inmate *shall* remain in custody in a secured facility until a trial is completed. At trial, the trier of fact (either the court or a jury, if requested) shall determine whether the person, by reason of a diagnosed mental disorder, is likely to engage in acts of sexual violence upon release.

Section 6603 provides that the inmate is entitled to a trial by jury, the assistance of counsel, and the right to retain experts or professionals to perform an examination on his or her behalf. Section 6603 specifically provides :

> "(a) A person subject to this article *shall be entitled to a trial by jury, the assistance **of** counsel, the right to retain experts or professional persons to perform an examination on his or her behalf and 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.*
>
> "(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

[3] Chapter 4, Statutes of 1996, made a minor amendment to section 6601, subdivision (h), by adding the words "in the superior court" at the end of the subdivision.

> "(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.
>
> "(d) A unanimous verdict shall be required in any jury trial. " (Emphasis added.)

If the court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator, the person is committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secured facility. (Welf. & Inst. Code, § 6604.) The two-year civil commitment is subject to an annual review by the state and extension of the commitment if the mental disorder and danger to the community continue. (Welf. & Inst. Code, § 6605 .)

With each yearly review, the committed person also has a right to petition the court for conditional release. (Welf. & Inst. Code, § 6605, subd. (b) .) If the committed person affirmatively waives the right to petition the court for conditional release, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the committed person does not affirmatively waive this right, the court "*shall set a show cause hearing* to determine whether facts exist to warrant a hearing on whether the person's condition has changed. " *The inmate has the right to be present and to have an attorney present at the show cause hearing.*

If the court determines at the show cause hearing that the inmate's mental condition has changed and that he or she is no longer a danger, the court *shall* set a hearing on that issue. (Welf. & Inst. Code, § 6605, subd. (c) .) At this subsequent hearing, the inmate *"has a right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding.* (Welf. & Inst. Code, § 6605, subd.(d).)

Section 6605, subdivision (d) further provides that:

> ". . .*The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state* and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The *committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment.* The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. " (Emphasis added.)

If the court or jury decides against the committed person at the hearing, the term of commitment of the person runs for an additional period of two years from the date of the ruling. If the court or jury decides in favor of the committed person (i.e, that the committed person no longer presents a danger to society), the committed person is unconditionally released. (Welf. & Inst. Code, § 6605, subd. (e) .)

In addition, the sexually violent predator can be released, either unconditionally or on an outpatient basis, with the following procedures:

- At any time, the State Department of Mental Health can seek *judicial review pursuant to the habeas corpus procedure* if the state believes the committed person is no longer a sexually violent predator. (Welf. & Inst. Code, § 6605, subd. (f).)

- The State Department of Mental Health can file a report and recommendation for conditional release if the facts suggest that the committed person is not likely to commit acts of predatory sexual violence while under the supervision and treatment in the community. (Welf. & Inst. Code, § 6607 .) If the court accepts the recommendation from the Department of Mental Health, a *hearing* is held pursuant to section 6608, subdivision (b), (c) and (d), to determine if the person would be a danger if released to the community under supervision. *Notice of the hearing is given to the designated county counsel, the attorney who represented the inmate at the initial commitment proceeding, and the Department of Mental Health.* If the court determines that the committed person continues to pose a threat to others, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the court determines that the committed person no longer poses a threat to the community, the committed person is placed in a state-operated conditional release program. At the end of the conditional release program, the court sets a hearing to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g).)

- After one year of commitment, the sexually violent predator may petition the court directly for conditional outpatient release. The court may dismiss the petition if it determines the petition is without merit. If the petition is not frivolous, the *court shall set a hearing, with notice to the designated county counsel, defense attorney and Department of Mental Health.* (Welf. & Inst. Code, § 6608, subds. (a) and (b).) If the court determines that the committed person remains a threat to others, the committed person remains in custody until the end of the two-year commitment. If, on the other hand, the court determines that the committed person no longer poses a threat to the community, the court places the committed person in a state-operated conditional release program for one year. Thereafter, another hearing is set by the court to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g) .)

The test claim legislation is similar to the Mentally Disordered Sex Offenders (MDSO) legislation. (Stats. 1977, ch. 164.) Both programs provide for the civil commitment of persons determined to be a MDSO or sexually violent predator to a state mental facility.

The Legislature appropriated funds to reimburse local governments for the costs associated with the MDSO program. However, in 1981, Chapter 928 repealed the MDSO portion of the statute prospectively (Welf. & Inst. Code, § 6316.2), and provided that persons committed under section 6316.2 would remain governed by this section until their commitments are terminated. Thus, counties continue to be reimbursed for the MDSO program.

Under former section 6316.2, a person who *suffers from a mental disease, defect, or disorder, and as result of such mental disease, defect, or disorder, is predisposed to the commission of sexual offenses to such a degree that he or she presents a substantial danger of bodily harm to*

others, may be civilly committed to a state mental facility. The statute further specifies that a patient (alleged MDSO) is entitled to the rights guaranteed under the state and federal Constitutions for criminal proceedings. These rights include the right to counsel, defense witnesses, and examinations.

Reimbursement is still provided for costs of transportation, care and custody of the patient (MDSO), trial costs, juror fees, and prosecuting district attorneys' costs if consent is given by the Attorney General for the district attorney to represent the state in proceedings under former section 63 16 .2. It should also be noted that the State Public Defender may contract with county public defenders to provide indigent legal defense. (Gov. Code, § 15402 .)

COMMISSION FINDINGS

Issue 1: Does the sexually violent predator legislation enacted by Chapters 762 and 763 of Statutes of 1995, and Chapter 4 of Statutes of 1996, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?[4]

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[5]

As indicated above, the test claim legislation requires a series of activities for the civil commitment of potential sexually violent predators following completion of their criminal sentence. These activities are described below.

Activities Performed by Counties

The Cornmission found that the test claim legislation obligates counties to complete the following activities for the civil commitment of sexually violent predators:

- Designate counsel to handle sexually violent predator cases referred by the state. (Welf. & Inst. Code, § 6601, subd. (i).)

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[4] Section 6, article XIII B states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. "

[5] *County of Los Angeles v. State of California (1987) 43* Cal.3d *46, 56; Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d *521, 537; Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d *830, 835.*

- Review cases referred by the state to determine if county counsel concurs with the state's recommendation to proceed with civil commitment procedures. (Welf. & Inst. Code, § 6601, subd. (i).[6])
- File petitions for civil commitment with the superior court. (Welf. & Inst. Code, § 6601, subd. (i) .)
- Represent the State of California and the indigent inmate in the civil commitment probable cause hearing, trial and all subsequent hearings and reviews. (Welf. & Inst. Code, §§ 6601, subd. (i), 6602, 6603, 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
- Provide the indigent inmate with necessary experts and investigation to prepare the defense for trial and subsequent hearings. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transport and house the inmate during the civil commitment proceedings. (Welf. & Inst. Code, § 6602.)

The Commission recognized that the activities listed above are performed by counties who carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally. Therefore, the first requirement necessary to determine whether the Legislature has imposed a reimbursable state mandated program is satisfied.

Moreover, the Commission found that the provisions of the test claim legislation impose new requirements, not previously imposed, upon the counties to implement civil commitment procedures for sexually violent predators following the completion of a criminal sentence. Although the MDSO program imposed similar activities upon counties, that program was repealed before the sexually violent predator legislation was enacted. Additionally, the procedure is civil, rather than criminal. Therefore, the test claim legislation imposes duties on counties that are not within their preexisting duty to prosecute crime relating to sexually violent predators .[7]

Accordingly, the Commission found that the test claim legislation constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

However, the Commission continued its analysis to deterrnine whether the sexually violent predator legislation is state mandated, or merely implements a federal law. Since the finding

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[6] Section 6601, subdivision (i), provides that "*if* the county's designated counsel concurs with the recommendation, a petition for commitment *shall* be filed in the superior court. ..". Despite the use of the word "if"" in the statute, the Comrnission found that the designated county attorney does not have discretion to file a petition for civil commitment. Rather, the county's attorney simply determines if he or she agrees with the state's recommendation based on the file and records of the inmate. If there is agreement, the county has no choice but to proceed with the filing of the petition. Accordingly, the Commission found this requirement mandatory.

[7] The Commission noted that the sexually violent predator legislation is *not* subject to the "crimes and infractions" exception to reimbursement under Government Code section 17556, subdivision (g). The US. Supreme Court held that similar sexually violent predator legislation in Kansas did not establish "criminal" proceedings and the involuntary confinement under the legislation was not punitive. *(Hendricks v. Kansas* (1997) 117 S .Ct. 2072.)

that the inrnate is a sexually violent predator results in commitment of the person to the custody of the Department of Mental Health and confinement in a locked facility, the 6th Amendment (right to counsel) and 14th Amendment (due process clause) of the U.S. Constitution are implicated.

Issue 2: Is the sexually violent predator legislation state mandated?

The U.S. Supreme Court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. *(Addington* v. *Texas* (1979) 441 U.S. 418, 425, 99 S.Ct. 1804, 1809.) Accordingly, the Commission recognized that the test claim legislation implicates federal due process concerns requiring consideration of due process procedures, including the right to counsel, before one is deprived of liberty.

The Department of Finance asserted that the indigent defense provisions of the test claim legislation merely implements federal law through the 6th and 14th Amendments to the U.S. Constitution and do not impose a reimbursable state mandated program. The Department contended that although they have found no definitive United States Supreme Court authority regarding a right to counsel in civil commitment proceedings, California courts have recognized that legal services for indigent persons at public expense are mandated in mental health matters where a restraint of liberty is possible. Furthermore, where there is a right to counsel, ancillary services, such as experts and investigative services are also provided. The Department stated: "It appears that the requirements of federal due process and equal protection require that indigents subject to the sexually violent predator proceedings be provided counsel and ancillary services, and to that extent, these aspects of the statute are 'required by federal law'. " (Citing *County* of *Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816.)

The claimant, California Public Defenders Association, the County of Monterey, the City and County of San Francisco, the Alameda County Public Defender's Office and the County of San Joaquin contended that federal law does not require the state to implement the civil commitment of sexually violent predators and, thus, a reimbursable state mandated program exists.

Right to Counsel, Experts and Investigative Services in Civil Commitment Proceedings

The Cornmission found no United States Supreme Court authority specifically holding that a defendant in a civil commitment proceeding has the right to counsel. However, the United States Supreme Court has recently analyzed similar sexually violent predator legislation enacted in Kansas and recognized that an individual's constitutionally protected interest in avoiding physical restraint may be overridden in the civil context provided the civil confinement takes place pursuant to "proper procedural and evidentiary standards. " *(Hendricks v. Kansas, supra,* 117 S.Ct. at 2079.)[8]

[8] The Kansas Sexually Violent Predator Act established procedures for the civil commitment of persons who, due to a "mental abnormality" or a "personality disorder," are likely to engage in predatory acts of sexual violence. Unlike the test claim legislation, the Kansas statute requires the state attorney general, rather than the local district attorney or county counsel, to initiate commitment procedures.

In addition, some federal courts have found that the assistance of counsel in civil proceedings is *required* to meet federal due process standards. The court in *Heyford v. Parker* (10th Cir. 1968) 396 F.2d 393, held that a civil proceeding resulting in involuntary incarceration for treatment commands observance of the constitutional safeguards of due process, including the right to counsel. (But *see Rud v. Dahl* (7th Cir. 1978) 578 F.2d 674, 678, which held that the Supreme Court has never specifically found that a civil proceeding requires the presence of the respondent as an element of due process.)

California courts have also recognized that legal services for indigent persons at public expense are *mandated* in civil proceedings relating to mental health matters where restraint of liberty is possible. *(Phillips* v. *Seely* (1974) 43 Cal.App.3d 104, 113; *Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835, 838.)

Finally, case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right. *(Mason v. State of Arizona* (9th Cir. 1974) *504* F.2d 1345; *People v. Worthy* (1980) 109 Cal.App.3d 514.)

Based on the foregoing authorities, the Commission found that the 6th Amendment right to counsel and the 14th Amendment due process clause of the U.S. Constitution require legal counsel, experts and investigative services be provided to indigent potential sexually violent predators throughout the civil commitment proceedings. Nevertheless, for the reasons stated below, the Commission determined that the test claim legislation represents a state mandated program.

Federal Law Does Not Require the Civil Confinement of Sexually Violent Predators

The court addressed the issue of federal constitutional requirements under the 6th and 14th Amendments in relation to a test claim filed by the County of Los Angeles on Penal Code section *987.9* (CSM-4411) in *County of Los Angeles v. Commission on State Mandates (1995)* 32 Cal. App .4th 805. The test claim legislation in *County of Los Angeles* required counties to pay for investigators and experts in preparation of the defense for indigent defendants in death penalty cases.

The court in *County of Los Angeles* affirmed the Comrnission's decision to deny the test claim. The court held that Penal Code section 987.9 merely implemented the guarantees under the U.S. Constitution. The court further held that the statute did *not* impose any *new* requirements upon local governmental entities. Accordingly, the court found that counties are still compelled to provide defense services under the 6th and 14th Amendments to indigents facing the death penalty even in the absence of state law.

However, unlike the test claim legislation in *County of Los Angeles,* there is no federal statutory or regulatory scheme mandating the states to implement civil commitment proceedings for sexually violent offenders. Therefore, the Commission recognized that local agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state.

Accordingly, the Commission found that the test claim legislation constitutes a state mandated program.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Cornmission **approved** the test claim for reimbursement of the following activities:

- 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, subd. (i).)
- Initial review of reports and records by the county's designated counsel to deterrnine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- 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, subds. (b) through (d), and 6608, subds. (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, subd. (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.)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO; COUNTY OF LOS ANGELES; COUNTY OF ORANGE; COUNTY OF SACRAMENTO; and, COUNTY OF SAN BERNARDINO, Petitioners/Plaintiffs, v. COMMISSION ON STATE MANDATES; STATE OF CALIFORNIA; DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; JOHN CHANG, in his official capacity as the California State Controller; and DOES 1 through 10, inclusive, Respondents/Defendants, DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; and DOES 11 through 25, Real Parties in Interest.	Case No. 37-2014-00005050-CU-WM-CTL Action filed: February 28, 2014 **[PROPOSED] WRIT OF ADMINISTRATIVE MANDAMUS** Dept.: 75 ICJ: Honorable Richard E. L. Strauss **[IMAGED FILE]**

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TO: Respondent, COMMISSION ON STATE MANDATES:

Pursuant to the judgment of this court, the Commission on State Mandates is commanded to set aside the Statement of Decision adopted on December 6, 2013, the Statement of Decision and Amended Parameters and Guidelines adopted on May 30, 2014 (corrected on February 27, 2015), and the Statewide Cost Estimate adopted March 12, 2015, in Mandate Redetermination Request 12-MR-01, *Sexually Violent Predators, (CSM-4509)*, and to reconsider the State Department of Finance's Request for Redetermination in a manner consistent with the opinion of the Supreme Court of the State of California as set forth at 6 Cal.5th 196.

Pending a further statement of decision by the Commission, the original Statement of Decision adopted on June 25, 1998, the Parameters and Guidelines adopted on September 24, 1998, as amended on October 30, 2009, and the Statewide Cost Estimate adopted March 25, 1999 remain in place and have not been superseded in accordance with Government Code section 17570.

The Commission shall file a return on the writ with this court within 120 days of service of the writ indicating what they have done to comply with the writ.

~~Date:~~ ~~By:~~ _____
~~Clerk of the Court~~

Date: 4-29-19 By: M. Reyes
_____
Deputy Clerk

PROOF OF SERVICE

I, ODETTE ORTEGA, declare:

I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On June 5, 2019, I caused to be transmitted the following documents:

1. WRIT OF ADMINISTRATIVE MANDAMUS.

☒ **(BY E-mail)** I caused to be transmitted a copy of the foregoing document(s) this date via Microsoft Outlook, which electronically notifies all counsel, the transmission was reported as complete and no error was reported that the electronic transmission was not completed;

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Clerk of the Court San Diego County Superior Court 220 West Broadway San Diego, CA 92101-3409 (*Courtesy Copy by mail*)	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 5, 2019, at San Diego, California.

By: _____
ODETTE ORTEGA

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

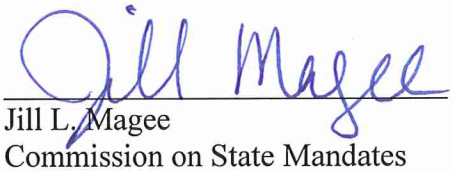
On June 11, 2019, I served the:

- **Notice of Entry of Judgement served to the Commission June 5, 2019**
- **Writ of Administrative Mandamus filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Welfare and Institutions Code Sections 6601 through 6608
  Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
  Department of Finance, Requester

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 June 11, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/11/19

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

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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RECEIVED
June 05, 2019
Commission on State Mandates

Exempt From Filing Fees (Gov't Code § 6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO; COUNTY OF LOS ANGELES; COUNTY OF ORANGE; COUNTY OF SACRAMENTO; and, COUNTY OF SAN BERNARDINO, Petitioners/Plaintiffs, v. COMMISSION ON STATE MANDATES; STATE OF CALIFORNIA; DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; JOHN CHANG, in his official capacity as the California State Controller; and DOES 1 through 10, inclusive, Respondents/Defendants, DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; and DOES 11 through 25, Real Parties in Interest.	Case No. 37-2014-00005050-CU-WM-CTL Action filed: February 28, 2014 **NOTICE OF ENTRY OF JUDGMENT** Dept.: 75 ICJ: Honorable Richard E. L. Strauss **[IMAGED FILE]**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 29, 2019 the Court entered judgment in this matter, a true and correct copy of which is attached hereto as Exhibit A.

DATED: June 5, 2019

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By: s/Stephanie A. Karnavas
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EXHIBIT A

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/29/2019 at 12:11:00 PM
Clerk of the Superior Court
By Jessica Pascual,Deputy Clerk

Exempt From Filing Fees (Gov't Code § 6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

COUNTY OF SAN DIEGO; COUNTY OF LOS ANGELES; COUNTY OF ORANGE; COUNTY OF SACRAMENTO; and, COUNTY OF SAN BERNARDINO, Petitioners/Plaintiffs, v. COMMISSION ON STATE MANDATES; STATE OF CALIFORNIA; DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; JOHN CHIANG, in his official capacity as the California State Controller; and DOES 1 through 10, inclusive, Respondents/Defendants, DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; and DOES 11 through 25, Real Parties in Interest.	Case No. 37-2014-00005050-CU-WM-CTL Action filed: February 28, 2014 ~~[PROPOSED]~~ **JUDGMENT ON REMAND** Dept.: 75 ICJ: Honorable Richard E. L. Strauss **[IMAGED FILE]**

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Attorneys for Petitioner/Plaintiff, County of San Bernardino

On remand from the Supreme Court of the State of California and the Fourth District Court of Appeal, Division One, the Court hereby enters judgment as follows:

1. The judgment entered by this court on May 12, 2015, is hereby reversed;

2. The court hereby directs the clerk of the court to issue a writ of mandate:

a. Directing the Commission on State Mandates to set aside the Statement of Decision adopted on December 6, 2013, the Statement of Decision and Amended Parameters and Guidelines adopted on May 30, 2014 (corrected on February 27, 2015), and the Statewide Cost Estimate adopted March 12, 2015, in Mandate Redetermination Request 12-MR-01, *Sexually Violent Predators, (CSM-4509)* and to reconsider the State Department of Finance's Request for Redetermination in a manner consistent with the opinion of the Supreme Court of the State of California set forth at 6 Cal.5th 196;

b. Informing the Commission that upon the setting aside of the decisions of the Commission referenced in Paragraph 3.a. above, the original Statement of Decision adopted on June 25, 1998, the Parameters and Guidelines adopted on September 24, 1998 and amended on October 30, 2009, and the Statewide Cost Estimate adopted March 25, 1999 remain in place and have not been superseded in accordance with Government Code section 17570;

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c. Directing the Commission to file a return on the writ with this court within 120 days of service of the writ indicating what they have done to comply with the writ; ~~and~~

Date: 4-29-19

Honorable Richard E.L. Strauss
Judge of the Superior Court

Approved as to form and content:

Judge Richard E. L. Strauss

DATED: April 19, 2019

THOMAS E. MONTGOMERY, County Counsel

By:
STEPHANIE KARNAVAS, Senior Deputy
Attorneys for Petitioner/Plaintiff, County of San Diego

DATED: April 19, 2019

MARY C. WICKHAM, County Counsel

By:
LUCIA GONZALEZ
Senior Deputy County Counsel
Attorneys for Petitioner/Plaintiff County of Los Angeles

DATED: April ___, 2019

LEON J. PAGE, County Counsel

By:
SUZANNE SHOAI, Deputy County Counsel
Attorneys for Petitioner/Plaintiff County of Orange

DATED: April ___, 2019

TRACI LEE, County Counsel

By:
KRISTA C. WHITMAN
Assistant County Counsel
Attorneys for Petitioner/Plaintiff County of Sacramento

c. Directing the Commission to file a return on the writ with this court within 120 days of service of the writ indicating what they have done to comply with the writ; and

Date: _____

_____
Honorable Richard E.L. Strauss
Judge of the Superior Court

Approved as to form and content:

DATED: April 19, 2019

THOMAS E. MONTGOMERY, County Counsel

By:
STEPHANIE KARNAVAS, Senior Deputy
Attorneys for Petitioner/Plaintiff, County of San Diego

DATED: April ___, 2019

MARY C. WICKHAM, County Counsel

By:
LUCIA GONZALEZ
Senior Deputy County Counsel
Attorneys for Petitioner/Plaintiff County of Los Angeles

DATED: April 22, 2019

LEON J. PAGE, County Counsel

By:
SUZANNE SHOAI, Deputy County Counsel
Attorneys for Petitioner/Plaintiff County of Orange

DATED: April ___, 2019

TRACI LEE, County Counsel

By:
KRISTA C. WHITMAN
Assistant County Counsel
Attorneys for Petitioner/Plaintiff County of Sacramento

c. Directing the Commission to file a return on the writ with this court within 120 days of service of the writ indicating what they have done to comply with the writ; and

Date: _____

_____
Honorable Richard E.L. Strauss
Judge of the Superior Court

Approved as to form and content:

DATED: April 19, 2019

THOMAS E. MONTGOMERY, County Counsel

By:
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DATED: April ___, 2019

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DATED: April ___, 2019

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DATED: April 19, 2019

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DATED: April 23, 2019

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County of ~~San~~ Bernardino

DATED: April ___, 2019

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Supervising Deputy Attorney General
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Attorneys for Respondents/Defendants
State of California, California Department
of Finance and California State Controller

DATED: April ___, 2019

COMISSION ON STATE MANDATES

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MATTHEW B. JONES, Staff Counsel
Attorneys for Respondent and Defendant
Commission on State Mandates

DATED: April ___, 2019

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DATED: April 19, 2019

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DATED: April ___, 2019

COMISSION ON STATE MANDATES

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DATED: April ___, 2019

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DATED: April 22, 2019

COMISSION ON STATE MANDATES

CAMILLE SHELTON, Chief Legal Counsel
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Attorneys for Respondent and Defendant
Commission on State Mandates

PROOF OF SERVICE

I, ODETTE ORTEGA, declare:

I am over the age of eighteen years and not a party to the case; I am employed in the County of San Diego, California. My business address is 1600 Pacific Highway, Room 355, San Diego, California, 92101.

On June 5, 2019, I caused to be transmitted the following documents:

1. **NOTICE OF ENTRY OF JUDGMENT.**

☒ **(BY E-mail)** I caused to be transmitted a copy of the foregoing document(s) this date via OneLegal System, which electronically notifies all counsel as follows:

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Clerk of the Court San Diego County Superior Court 220 West Broadway San Diego, CA 92101-3409 (*Courtesy Copy by mail*)	Xavier Becerra, Attorney General Mark Beckington Supervising Deputy Attorney General Todd Grabarsky, Deputy Attorney General Mark.Beckington@doj.ca.gov; todd.grabarsky@doj.ca.gov *(Attorneys for Defendants/Respondents State of California, California Dept. of Finance and California State Controller)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 5, 2019, at San Diego, California.

By: _____
ODETTE ORTEGA

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

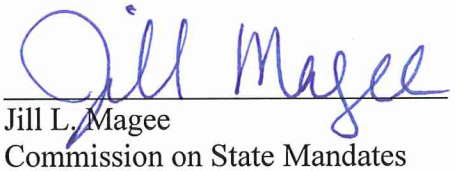
On June 11, 2019, I served the:

- **Notice of Entry of Judgement served to the Commission June 5, 2019**
- **Writ of Administrative Mandamus filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Welfare and Institutions Code Sections 6601 through 6608
  Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
  Department of Finance, Requester

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 June 11, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/11/19

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

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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EXHIBIT E

STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

February 8, 2019

Ms. Erika Li
Department of Finance
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Li:

This letter requests written comment relating to the Commission's reconsideration of the *Sexually Violent Predators* (*SVP*) Mandate Redetermination on Remand, pursuant to court order.

The California Supreme Court, in *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, held the Commission's prior Decision in *Sexually Violent Predators* (*CSM-4509*), 12-MR-01 to be incorrect, and remanded the matter to the Commission, with instructions for reconsideration. Though the writ has not yet been issued by the Court, Commission staff are working to expedite the reconsideration on remand pursuant to the California Supreme Court decision. In preparation for the Reconsideration of the Request for Mandate Redetermination on Remand in accordance with the Supreme Court's direction, the Commission is seeking comment from parties, interested parties, and interested persons as stated below.

Background

On January 15, 2013, the Department of Finance (Finance), in accordance with Government Code section 17570, filed a Request for Mandate Redetermination of the *SVP* Decision adopted on June 25, 1998. Finance alleged that Proposition 83, adopted by the voters in the November 2006 general election, constituted a "subsequent change in law," as defined, because the Welfare and Institutions Code sections approved in the Test Claim Decision were either expressly included in or necessary to implement Proposition 83.

On December 6, 2013, the Commission adopted the Decision partially approving Finance's Request for Mandate Redetermination. That Decision found that the State's liability pursuant to article XIII B, section 6 had been modified by a subsequent change in law, as defined, and that six of eight approved activities were no longer reimbursable pursuant to Government Code section 17556, beginning July 1, 2011. Several counties jointly filed a petition for writ of mandate seeking to overturn the Commission's Decision, and the case was ultimately heard by the California Supreme Court.

On November 19, 2018, the California Supreme Court issued its decision in *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, finding the Commission's Decision on mandate redetermination relating to the *SVP* program was incorrectly decided, and directing the Commission to reconsider the matter, with instructions. Specifically, the Court did not agree with the Commission's findings that several of the approved activities were "expressly included in" Proposition 83, within the meaning of Government Code section 17556(f), because, the Court reasoned, the operative Welfare and Institutions Code provisions were only "technically reenacted" by the Proposition, and were "statutory bystanders," not actually amended by the ballot measure, but included only for context and clarity in accordance with article IV, section 9 of the California Constitution.[1] Further, the Court disagreed with the Commission's reasoning that the Amendment Clause of Proposition 83, which prohibited any amendment by the Legislature that does not expand the scope of the SVP program absent a two-thirds majority vote, should be interpreted more narrowly, to apply only to those provisions actually altered by the ballot measure or "integral to accomplishing the electorate's goals…"[2] Then, because the Court determined that the relevant Welfare and Institutions Code provisions were not "expressly included in" the ballot measure, the Commission's reasoning that the remaining activities were "necessary to implement" the other provisions also failed.[3] For these reasons, the Court found that the Commission's Decision was incorrect, and not supported. However, the Court also determined that the Commission should consider whether Proposition 83 might have had an effect on the mandate more broadly, as a result of the expanded definition of an SVP:

> Unfortunately, the Commission never considered whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. Its ruling granting the State respondents' request for mandate redetermination instead rested entirely on grounds that we now disapprove. Moreover, the parties admit — and the Court of Appeal found — that the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments. (See *County of San Diego*, *supra*, 7 Cal.App.5th at p. 36, fn. 14, 212 Cal.Rptr.3d 259; cf. *San Diego Unified*, *supra*, 33 Cal.4th at p. 889, 16 Cal.Rptr.3d 466, 94 P.3d 589 [additional state statutory protections that were "incidental" to federal due process requirements, "producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c)"].) Under the circumstances, we find it prudent to remand the matter to the Commission to enable it to address these arguments in the first instance.[4]

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[1] See, e.g., *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 209-210.

[2] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 212-214.

[3] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 215.

[4] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

Request for Simultaneous Briefing

Accordingly, all parties, interested parties, and interested persons receiving this letter are requested to file written comments on or before **March 11, 2019**. Specifically, please brief the following issue:

> "Whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."[5]

Please also comment on "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."[6]

Please be aware that the Commission is beginning a new matter page for this remand which is located at: https://www.csm.ca.gov/matters/12-MR-01-R.php. You will note that after this letter, the most recent item currently on the page is the original "Request to Adopt a New Test Claim Decision filed by Department of Finance (Finance) on January 15, 2013." If you wish the Commission to consider comments that you have filed previously on the original 12-MR-01 matter in its new Decision on remand, please include that request in your comments in response to this letter and be specific regarding the date of the comments and who filed them.

Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief. (Cal. Code. Regs., tit. 2 §§ 1190.2 and 1187.5.) If representations of fact are made, they must be supported by documentary or testimonial evidence filed with the comments on the Mandate Redetermination. (Cal. Code. Regs., tit. 2 §§ 1190.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[7] Requests for extensions of time to file comments may be filed in accordance with section 1187.9 of the Commission's regulations.

Process for Filing Comments

The Commission has prepared a mailing list of parties, interested parties, and interested persons for this Mandate Redetermination. The mailing list will be uploaded to the Commission's website and an e-mail notification of its availability will be sent to everyone on the list who has provided an e-mail address. A hard copy will be provided to persons who have not provided an e-mail address and to any person who requests a hard copy. (Cal. Code. Regs., tit. 2 § 1181.4.)

You are advised that if written materials are filed in hard copy, the filing must simultaneously be served on everyone on the mailing list, and be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's

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[5] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[6] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[7] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

website. For instructions on electronic filing, please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.php. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.3.

Tentative Hearing Date

Though the writ has not yet issued from the Court, in an effort to expedite this matter, this Reconsideration of the Request for Mandate Redetermination on Remand is tentatively set for hearing on **July 26, 2019**.

Sincerely,

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 8, 2019, I served the:

- **Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, issued February 8, 2019**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Welfare and Institutions Code Sections 6601 through 6608
  Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
  Department of Finance, Requester

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 8, 2019 at Sacramento, California.

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/8/19

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

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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March 26, 2019
Commission on
State Mandates

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EXHIBIT F

March 22, 2019

Ms. Heather Halsey
Executive Director
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Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The Department of Finance has reviewed the February 8, 2019 request for comment and provides the following in support of the request for mandate redetermination.

By enacting Proposition 83 in 2006, California voters materially expanded the definition of a "sexually violent predator" and directed that the Legislature could not narrow or repeal that definition through its ordinary legislative process. The source of that expanded definition is now the voters. After that expansion, the costs incurred by local governments in complying with the Sexually Violent Predators mandate flow from Proposition 83 and are "necessary to implement" the ballot measure for purposes of Government Code section 17556, subdivision (f).

As originally enacted by the Legislature, the Sexually Violent Predator Act (SVPA) defined a narrow category of unusually dangerous sex offenders and established a process for identifying such offenders and having them civilly committed. That process imposed a number of mandatory duties on both state and local agencies. At every step of that process, the central issue is whether the individual satisfies the statutory definition of a "sexually violent predator." The local duties required by the SVPA follow from the statutory definition of a "sexually violent predator."

In adopting Proposition 83, the voters expanded the definition of "sexually violent predator" in several ways. First, they reduced the required number of victims, so that the offender must have "been convicted of a sexually violent offense against one or more victims," as opposed to "two or more" in the original statute. (Welf. & Inst. Code, § 6600, subd. (a)(1).) Second, the voters expanded the set of crimes that qualify as a "sexually violent offense," adding any felony violation of Penal Code section 207 (kidnapping), section 209 (kidnapping for ransom, reward, or extortion, or to commit robbery or rape), or section 220 of the Penal Code (assault to commit mayhem, rape, sodomy, or oral copulation), committed with the intent to commit another enumerated "sexually violent offense." (Welf. & Inst. Code, § 6600, subd. (b).)

Third, the voters directed that if an offender had a prior conviction for which he "was committed to the Department of the Youth Authority pursuant to [Welfare and Institutions Code] Section 1731.5," or that "resulted in an indeterminate prison sentence," that prior conviction "shall be considered a conviction for a sexually violent offense." (Welf. & Inst. Code, § 6600, subd. (a)(2)(H), (I).)

This expansion of the category of people who would be subject to the SVPA process was a central purpose of Proposition 83. The voters found in Section 2 of the ballot measure that "existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved." Section 31 of Proposition 83 stated, "It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders." The opening lines of the ballot summary notified voters that one of the ways Proposition 83 would accomplish this goal was by "Expand[ing] [the] definition of a sexually violent predator." The Legislative Analyst also explained that Proposition 83 "generally makes more sex offenders eligible for an SVP commitment" by changing the definition of a sexually violent predator.

The voters also insulated these definitional changes from legislative repeal or revision. Proposition 83 prohibits the Legislature from repealing or narrowing the scope of its provisions "except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." So, the Legislature cannot modify the SVPA through its normal legislative process to revert to the definition of "sexually violent predator" that existed before Proposition 83.

The SVPA requires state and local agencies to take certain actions with respect to offenders who appear to fit within the voter-adopted definition of a "sexually violent predator." These provisions make clear that the costs of carrying out the SVPA process flow from the definition of "sexually violent predator." That definition compels the State to screen and evaluate an offender. (See Welf. & Inst. Code, § 6601, subds. (a)-(h).) If state officials determine that the offender does not satisfy the definition, no local costs need be incurred with respect to the offender; but if they conclude that the offender does satisfy the definition, they must refer him to local authorities for civil commitment proceedings. (See *id.*, subd. (h)(1).) The counties must designate attorneys for the purpose of conducting an initial review of reports and records to determine whether the county agrees that the offender fits within the definition of a "sexually violent predator." (See *id.*, subd. (i).) Only if those attorneys agree that the definition applies to a particular offender will the county incur additional costs associated with some or all of the other eight SVPA duties. (See *ibid.*; *id.*, §§ 6602-6604, 6605, subds. (b)-(d), 6608, subds. (a)-(d).)

Because all of these costs flow from the definition of a "sexually violent predator," the question of whether the State must reimburse turns on whether or not the Legislature is the source of that definition. Before Proposition 83, it was. After Proposition 83, the voters are the source of the expanded definition of a "sexually violent predator." The Legislature can no longer repeal or narrow that definition through normal legislative processes. (Cal. Const., art. II, § 10, subd. (c).) Accordingly, the State is no longer financially responsible for reimbursing such costs.

Welfare and Institutions Code section 6600 defines a "sexually violent predator." While that section was not listed in the original test claim decision as imposing reimbursable mandated activities, the California Supreme Court said "it would be misleading to suggest that Welfare and Institutions Code section 6600 was thereby rendered irrelevant to the duties set forth in the test

claim statutes. None of the specified local government duties is triggered until an inmate is identified as someone who may be an SVP. (. . .) Although the SVP definition does not itself impose any particular duties on local governments, it is necessarily incorporated into each of the listed activities. Indeed, whether a county has a duty to act (and, if so, what it must do) depends on the SVP definition." (*County of San Diego v. Commission on State Mandates (2018)* 6 Cal.5th 196, 216-217). The entire purpose of the SVPA is to provide a mechanism for processing and, where appropriate, civilly committing the category of offenders defined as "sexually violent predators." The duties required of counties are necessary to that process.

Regardless of the number of offenders processed by local governments in a particular year, it is not disputed that the voters expanded the category of offenders who "shall" be referred to local governments as part of the SVPA process when they adopted Proposition 83 and altered the definition of "sexually violent predator." All those offenders are now referred to local governments at the direction of the voters—not the Legislature. This mandate is now imposed by the voters and is no longer reimbursable by the State.

Sincerely,

Erika Li

ERIKA LI
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

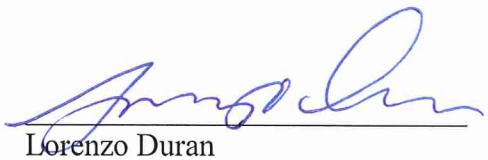
On March 26, 2019, I served the:

- **Finance's Late Comments on the Mandate Redetermination on Remand filed March 26, 2019**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Welfare and Institutions Code Sections 6601 through 6608
  Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
  Department of Finance, Requester

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 March 26, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

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Last Updated: 3/22/19

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

Matter: Sexually Violent Predators

Requester: Department of Finance

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April 10, 2019
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EXHIBIT G

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April 10, 2019

Via Drop Box

Heather Halsey
Executive Director
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RE: Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego, et al. v. Commission on State Mandates, et al.* (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statues 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The County of Los Angeles, on behalf of the Los Angeles Office of Auditor-Controller, the Los Angeles Office of the Public Defender, the Los Angeles District Attorney's Office and the Los Angeles County Sheriff's Department (collectively referred to as the "County"), hereby submits the following in response to your request for comments as set forth in your letter dated February 8, 2019.

Introduction and Background

On June 25, 1998, the Commission on State Mandates (Commission) concluded that costs associated with eight activities required of local governments by the Sexually Violent Predators Act ("SVPA") were eligible for reimbursement. Fifteen years later, the Department of Finance ("DOF") requested that the Commission adopt a new test claim under Government Code section 17570. DOF argued that when the voters enacted Proposition 83, the state mandate ended because the duties were either "expressly included in" or "necessary to implement" Proposition 83.[1]

In 2013, the Commission adopted a new Statement of Decision following its conclusion that six of the duties it deemed state-mandated in 1998 were instead mandated by Proposition 83 and therefore the costs of those activities were no longer eligible for reimbursement. The counties of Los Angeles, San Diego, Orange, Sacramento and San Bernardino ("Counties") challenged the decision of the Commission by filing a complaint seeking declaratory relief and a petition for writ of administrative mandamus in San Diego Superior Court. The request for relief was denied and the Counties appealed the trial court's decision.

The Court of Appeal, Fourth Appellate District, Division One reversed and held that the Commission and trial court erred in finding that *any* modification of a statute by a ballot initiative converts the mandate from one imposed by the legislature to one imposed by the voters. Moreover, the Court of Appeals stated that such an "interpretation" leads to an absurd result, allowing the state to avoid the subvention requirement by advancing propositions that reenact without changing or that only marginally modify existing laws. The State appealed the matter to the Supreme Court of California.

The Supreme Court agreed that the Commission erred in treating Proposition 83 as a basis for terminating reimbursement to local governments simply because certain provisions of the SVPA had been restated without substantive change in Proposition 83. They remanded the matter to the Commission so it can determine, "in the first instance, whether and how the initiative's expanded definition of an SVP may affect the state's obligation to reimburse the Counties for implementing the amended statute". (*County of San Diego et al. v. Commission on State Mandates* 240 Cal.Rptr.3d 52, 57)

[1] Request to Adopt a New Test Claim Decision filed by the Department of Finance submitted on January 15, 2013.

A. THE DEPARTMENT OF FINANCE HAS NOT MET ITS BURDEN OF SHOWING A "SUBSEQUENT CHANGE IN LAW" AS DEFINED IN GOVERNMENT CODE SECTION 17570

Although the Commission has requested Comments related to two inquiries, it is important to note that the DOF has not met its initial burden. Government Code Section 17570(b) states that 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 Article XIII B of the California Constitution has been modified based on a subsequent change in law." The DOF has provided no evidence that Proposition 83 created a subsequent change in law. The DOF's argument is conclusory in stating that because the voters "are the source" of the expanded definition of Prop. 83, that the state is no longer financially responsible for reimbursing such costs.[2] Thus, the DOF has failed to make a showing that the state's liability 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.

B. THE EXPANDED SEXUALLY VIOLENT PREDATOR ("SVP") DEFINITION IN PROPOSITION 83 DID NOT TRANSFORM THE TEST CLAIMS STATUTES AS A WHOLE INTO A VOTER-IMPOSED MANDATE

The definition of an SVP has always involved a two part process. First, an individual must have been convicted of a crime involving sexual violence. A second component is that an individual "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." Welfare and Institutions Code (WIC) section 6600. Prior to Proposition 83, WIC section 6600 defined a SVP as an individual who had been convicted of two or more qualifying sexually violent offenses. The passage of Proposition 83 resulted in the reduction of the qualifying offense to one or more. However, Proposition 83 left unchanged the mental disorder component of the SVP definition. As will be explained in the following section, the low number of SVP referrals post Jessica's Law supports the conclusion that Proposition 83 did not transform the test claims section as a whole.

In their Comment, the DOF ignores the legislature's own expansion of the SVP definition in SB 1128. While it is true that Proposition 83 expanded the set

[2] March 22, 2019, Letter from Department of Finance to Commission on State Mandates "DOF Letter")

of crimes that qualify as "sexually violent offenses" to include Penal Code section 207 (kidnapping), section 209 (kidnapping for ransom, reward, or extortion, or to commit robbery or rape), and section 220 (assault to commit mayhem, rape, sodomy, or oral copulation), it avoids the fact that the legislature in enacting SB 1128, prior to the passage of Proposition 83, had already expanded the SVP definition to include those offenses.

The expanded SVP definition in Proposition 83 did not substantively alter the SVPA and therefore the state's obligation to reimburse Counties must continue. The DOF incorrectly states that, "it is undisputed that the voters expanded the category of offenders who "shall" be referred to local governments as part of the SVPA process." (See DOF Letter) The process of identifying an SVP is not simply whether they have committed one or more qualifying offenses, there is also a mental evaluation component. A referral to local government is not automatically created because of the presence of a qualifying offense – more is required. They go on to incorrectly state that "all those offenders are now referred to local governments at the direction of the voters." (See DOF Letter) This statement misconstrues the SVP identification process by suggesting that Proposition 83 automatically resulted in referrals being generated, giving no consideration to the second prong which involves a mental health diagnoses.

C. THE EXPANDED DEFINITION OF SVP DID NOT RESULT IN AN INCREASE IN REFERRALS TO LOCAL GOVERNMENTS

The expanded definition of SVP did not increase costs to local government, but rather it increased the number of referrals from the California Department of Corrections and Rehabilitation ("CDCR") to the Department of State Hospitals ("DSH"). WIC section 6600 defines "sexually violent predator" as a "person who has been convicted of a sexually violent offense against one 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 criminal behavior." Diagnosed mental disorder is specifically defined as a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." WIC section 6600(c).

The process for determining whether a convicted sex offender meets the requirements of a sexually violent predator takes place in several stages. In the early stages, the State of California bears the cost of implementing the SVP Program. The CDCR and the Board of Parole Hearings screens inmates in its custody at least six months before their scheduled date of release from prison.

WIC section 6600(a) This process primarily involves review of the inmate's background and criminal record to determine whether a person has committed a sexually violent offense. After inmates are identified as having committed qualifying offenses, a referral is made to the DSH (previously the Department of Mental Health) for a "full evaluation" as to whether the criteria in section WIC section 6600(b) is met.

The evaluation performed by DSH must be conducted by at least two practicing psychiatrists or psychologists in accordance with a standardized assessment protocol. (WIC § 6601(c) and (d)). "The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of recidivism among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder." (WIC § 6600(c)) Two evaluators must agree that the inmate is mentally disordered and dangerous within the meaning of section 6600 in order for proceedings to move forward under the Act. (WIC § 6601(d).) In such cases, the DSH transmits a request for a petition for commitment to the county in which the alleged SVP was last convicted, providing copies of the psychiatric evaluations and any other supporting documentation. (WIC § (d), (h), and (i).) "If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court . . . ." (WIC § 6600(i).) At this stage, once the DSH refers the case to the county's designated counsel, the previously identified mandated activities are imposed upon the local government and costs to local government start to incur.

CDCR's primary role in the SVP identification process was to refer only those prisoners that had the requisite prior convictions. The expanded definition in Proposition 83 resulted in an increase in the number of referrals from CDCR to DSH. (See Table 3 of the July 2011 California State Audit on the Sex Offender Commitment Program, "SVP Audit"). Although the number of individuals screened by CDCR and DSH increased, the number of referrals to local government did not increase as expected. In Los Angeles County, the average annual number of referrals from DSH to the Los Angeles District Attorney's Office was 32.9 cases from 1996-2006. The average annual number of referrals after the passage of Proposition 83 was 23.5 cases.[3] These numbers are also

[3] Declaration of Jay Grobeson, Deputy in Charge of the SVP Unit of the Los Angeles County District Attorney's Office. Although Proposition 83 was passed in November of 2006, for purposes of calculating the data, cases referred in 2007, and beyond, were considered to be post Prop. 83 cases. In 2006, there were 23 referrals from DSH. For purposes of calculating the statistics, all of 2006 case referrals were considered Pre-Prop. 83 cases.

consistent with the 2011 SVP Audit which concluded "despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law." (SVP Audit p.15).

Dr. Brian Abbott, a psychologist who has conducted over 500 SVP evaluations since 2002, has offered an explanation for the reduced number of referrals to local government. He explains that in SVP proceedings, the most common diagnoses offered are paraphilic disorders. (See Declaration of Dr. Brian Abbott and respective curriculum vitae) According to the Diagnostic and Statistical Manual of Mental Disorders 5th Edition (DSM-5), a paraphilic disorder is a mental condition where over a period of six months the individual manifests fantasies, urges, or behaviors resulting from recurrent, intense sexual arousal about certain forms of sexually deviant behavior (e.g., prepubescent children, exposing one's genitals to unsuspecting persons). Dr. Abbott explains that "individuals who are subject to SVP psychological evaluations by Department of State Hospitals psychologists typically do not reveal information about their sexual urges and fantasies. Therefore, DSH psychologists rely upon patterns of sexually deviant behavior that the individual exhibits toward victims by which to determine whether the individual suffer from the diagnosed mental disorder." Proposition 83's reduction in the number of victims from two to one made it more difficult for psychologists to find a pattern of deviant sexual behavior to substantiate the presence of a paraphilic disorder. In Dr. Abbott's opinion, "this situation best explains why there has not been an increase in referrals of individuals to the District Attorney for filings of SVP petitions with the expanded definition of an SVP as specified by Proposition 83."

CONCLUSION

DOF has failed to show that Proposition 83 transformed the test claims statute as a whole into a voter-imposed mandated. DOF did not present evidence or legal argument that the state's liability for the 1998 test claim decision had been modified due to the passage of Proposition 83. There is no evidence that Proposition 83 modified the duties already imposed on local government under the SVPA. Furthermore, DOF chose to present no data whatsoever despite the Supreme Court's inquiry of whether Proposition 83 affected the number of referrals to local governments. Clearly, DOF presented no data because the data in the State's own audit was not favorable to their position. Accordingly, the County of Los Angeles requests that the Commission deny DOF's request for redetermination.

I, Lucia Gonzalez, declare under penalty of perjury that the foregoing, signed on April 10, 2019, is true and correct to the best of my personal knowledge, information or belief.

Very truly yours,

MARY C. WICKHAM
County Counsel

By
LUCIA GONZALEZ
Senior Deputy County Counsel
Government Services Division

LG:lal

Attachments

Declaration of Jay Grobeson

DECLARATION OF JAY GROBESON

IN SUPPORT OF COUNTY OF LOS ANGELES

SEXUALLY VIOLENT PREDATORS CSM-4509, 12-MR-01-R

I, JAY GROBESON declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters expressly set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I am a member of the Bar of the State of California. I have been licensed to practice law in California since 1985.

3. I have been employed by the Los Angeles County District Attorney's Office, since March of 1989. I am currently the Deputy In Charge of the Sexually Violent Predator (hereinafter "SVP") Unit.

4. As a Deputy In Charge my duties include, *inter alia*, supervising the deputies in the unit, reviewing packets submitted by the Department of State Hospitals for the filing of SVP petition, and assign cases to deputies.

6. I have read and am familiar with WIC section 6600 et. seq.

7. In my capacity as Deputy In Charge, I have access to a Los Angeles District Attorney database that contains the number of SVP referrals received from the State of California's Department of State Hospitals.

9. The data system we use to track the number of SVP referrals is part of "Sexually Violent Predators on NPUBApps, within our Lotus Notes database.

10. I have reviewed the following list which reflects the number of annual referrals from the Department of State Hospitals to the Los Angeles County District Attorney:

- 1996 – 74 referrals
- 1997- 42 referrals
- 1998 – 19 referrals
- 1999- 16 referrals
- 2000 – 32 referrals
- 2001 - 30 referrals
- 2002- 29 referrals
- 2003 – 36 referrals
- 2004 – 31 referrals
- 2005 – 30 referrals
- 2006- 23 referrals
- 2007 – 46 referrals
- 2008 – 44 referrals
- 2009 – 22 referrals
- 2010 - 31 referrals
- 2011 – 45 referrals
- 2012 - 21 referrals
- 2013 - 11 referrals
- 2014- 5 referrals
- 2015 – 16 referrals
- 2016 – 15 referrals
- 2017 – 12 referrals
- 2018 – 14 referrals

11. The database discloses that in 2011, 45 referrals were made to the Los Angeles County District Attorney's Office. Of those, 30 SVP petitions were filed in 2011. The office declined to file petitions for 11 of the referrals. Four of the submitted petitions were filed in calendar year 2012.

I declare the foregoing to be true and correct under penalty of perjury.

Executed this 6th of March, at Chatsworth, California.

JAY GROBESON

Declaration of Brian R. Abbott

Declaration of Brian R. Abbott

I, BRIAN R. ABBOTT, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters expressly set forth herein on information and belief, and, as to those matters, I believe them to be true, and, if called upon to testify, I could and would competently testify to the matters set forth herein.

2. I am a clinical and forensic psychologist licensed to practice in the states of Washington (PY60248127) and California (PSY18655). I am also a licensed sexual offender evaluator in Illinois. I have evaluated and treated sexual offenders for more than forty years. I have been conducting sexually violent predator ("SVP") psychological evaluations in California and seven other states since 2002. I have conducted nearly 500 SVP evaluations with approximately 350 of the evaluations occurring in California.

3. In California, I determine whether individuals meet the legal criteria for civil confinement as SVPs according to the California Welfare and Institution Codes § 6600. The legal criteria require that the individual has been convicted of qualifying sexual crimes, as established by law, involving a certain number of victims and the individual suffers from a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely the individual will engage in sexually violent criminal behavior. I have conducted such SVP evaluations before

and after the passage of Proposition 83.

4. Further details as to my qualifications and experience are listed in my curriculum vitae that is contained in Exhibit A to this declaration and it is incorporated herein by reference.

5. I am aware that Proposition 83 reduced the number of qualifying victims from two to one.

6. I have read the 2011 State Audit on the California Sexual Offender Commitment Program ("Audit").[1] From my review of the Audit, I am aware that the number of referrals that the Department of Corrections and Rehabilitation made to the Department of Mental Health. [2] I am familiar with the data from the Audit specifying the number of referrals the Department of Mental Health made to District Attorneys' Offices for the filing of petitions for civil confinement as SVPs. A referral to the District Attorney is predicated on two Department of Mental Health psychologists having conducted psychological evaluations of the individual and concluding the individual meets the legal requirements of being an SVP.

7. I have read the March 6, 2019 declaration of Los Angeles County Deputy District Attorney Jay Grobeson regarding the number of referrals that DSH has made to the Los Angeles County District Attorney between 1996 and 2018. The annual average

[1] California State Auditor (2011, July). Sex offender commitment program: Streamlining the process for identifying potential sexually violent predators would reduce unnecessary or duplicative work. Downloaded from: https://www.bsa.ca.gov/pdfs/reports/2010-116.pdf

[2] Since the publication of the audit the agency in now referred to at the Department of State Hospitals..

number of referrals before passage of Proposition 83 was 33 and since the passage of Proposition 83 the average annual referrals have declined to 24.

8. It would be reasonable to assume that the reduction of SVP qualifying victims from two to one, with the passage of Proposition 83, would broaden the pool of individuals who would be referred to the District Attorney for petitions as SVPs, but the data from the Los Angeles County District Attorney reveals the contrary. In the remainder of the declaration I address the likely reasons for this situation.

9. The legal definition of a diagnosed mental disorder under WIC § 6600 consists of two sequential contingencies. First, an individual suffers from an acquired or congenital condition. Second, the acquired or congenital condition affects emotional or volitional capacity that predisposes the individual to commit sexually violent acts. Psychologists who assess individuals under WIC § 6600 use the Diagnostic and Statistics Manual, currently the Fifth Edition ("DSM-5"),[3] as the basis for substantiating the presence of the acquired or congenital condition. If the individual suffers from one or more DSM-5 conditions, the psychologist must then determine if acquired or congenital condition affects emotional or volitional capacity that predisposes the individual to commit sexually violent acts. If both conditions are satisfied, then the individual suffers from the diagnosed mental disorder.

10. Based on my experience and training, the most common DSM-5

[3] American Psychiatric Association. (2013). *Diagnostics and Statistical Manual Fifth Edition (DSM-5)*. Washington, D.C.: American Psychiatric Publishing, Inc.

diagnoses used to establish the acquired or congenital condition fall into the class of paraphilic disorders. Paraphilic disorder are mental conditions where over a period of six months the individual manifests fantasies, urges, or behaviors resulting from recurrent, intense sexual arousal about certain forms of sexually deviant behavior (e.g., prepubescent children, exposing one's genitals to unsuspecting persons). Paraphilic disorders are a class of mental disorders that most logically fit the second contingency of the diagnosed mental disorder i.e., affect on emotional or volitional capacity that predisposes the individual to commit sexually violent acts.

11. The clinical basis for diagnosing a paraphilic disorder requires the psychologist to establish a repetitive pattern of sexual behavior, sexual fantasies, or sexual urges resulting from the focus of the deviant sexual arousal. Similarly, a repetitive pattern of sexual behavior must be identified to determine if the individual exhibits the lack of ability to control emotions or behavior that predisposes the individual to commit sexually violent acts.

12. Individuals who are subject to SVP psychological evaluations by Department of State Hospital ("DSH") psychologists typically do not reveal information about their sexual urges and fantasies. Therefore, DSH psychologists rely upon patterns of sexually deviant behavior that the individual exhibits toward victims by which to determine whether the individual suffers from the diagnosed mental disorder. The individual's pattern of sexually deviant behavior toward victims informs about both the presence of a paraphilic disorder and whether the

condition impairs the individual's ability to control behavior or emotions that predispose the individual to commit sexually violent acts.

13. The reduction in the number of qualifying victims from two to one with the implementation of Proposition 83 in 2007 effectively narrowed the database of information that psychologists rely upon to establish the necessary pattern of sexually deviant behavior to substantiate the presence of paraphilic disorders and the individual's ability to control behavior or emotions that predispose the individual to commit sexually violent acts. As result, it became difficult for psychologists to find individuals with one qualifying victim as suffering from the diagnosed mental disorder. In my opinion, this situation best explains why there has not been an increase in referrals of individuals to the District Attorney for filings of SVP petitions with the expanded definition of an SVP as specified by Proposition 83.

14. I declare under penalty of perjury that the foregoing in true and correct.

SIGNED and DATED in San Jose, Santa Clara County, California this 8th day of April 2019.

Brian R. Abbott, Ph.D.

BRIAN R. ABBOTT, PH.D.

Brian R. Abbott, PH.D.
Curriculum Vitae

BRIAN R. ABBOTT, PH.D.

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brian@dr-abbott.net email

SUMMARY

More than 35 years of forensic and clinical experience with criminal justice populations, juvenile delinquency, and dependency matters in such areas as:

◊ Forensic Evaluations
◊ Expert Witness
◊ Consultation
◊ Psychotherapy
◊ Program Development
◊ International Spokesperson
◊ Research & Publication
◊ Professional Education

FORENSIC EVALUATIONS

- ✓ Performed more than 2,000 psychological evaluations in 40 years for county agencies, Courts, and attorneys.
- ✓ Court appointed evaluator for delinquency and dependency Courts in Santa Clara, San Benito, and Alameda counties.
- ✓ Specialty in the areas of sexual offenders, including internet sexual solicitation of minors, possession of child pornography, sexually violent predators, adolescent and adult sexual offenders, delinquent youth, dependency cases, adult victims of sexual abuse, child and adolescent victim of sexual abuse, and mentally disordered offenders.
- ✓ Experience in competency evaluations
- ✓ Administration and interpretation of objective and projective personality testing, intellectual assessment of adults and children, and assessment for intellectual disability.
- ✓ Trained to administer and interpret Abel Assessment for Sexual Interest, Psychopathy Checklist Revised, Stable-2007, and Structured Risk Assessment- Forensic Version.
- ✓ Qualified as expert witness multiple jurisdictions in California, Washington, New York, Florida, Missouri, New Hampshire, and Honolulu, Hawaii.

EXPERT TESTIMONY & CONSULTATION

- ✓ Called as defense and prosecution witness
- ✓ Expertise in following areas: assessment and treatment of adult, adolescent, and child sexual offenders, victims of sexual and physical abuse, and non-offending parents; differential diagnosis on emotional,

mental, and behavior disorders; dual diagnosis; diagnosis and risk assessment of offenders involved in Internet child pornography possession and Internet stings using police child-decoys; assessing potential for sexual reoffending; scoring and use of Static-99R; psychosocial dynamics and characteristics of sexual offenders, non-offending parents, and child sexual abuse victims, child development, capacity to parent, amenability to treatment, 288.1 PC evaluations, competency to assist in defense, fitness for juvenile court proceedings, use of sexual reoffense risk instruments, nature and extent of family dynamics, making treatment recommendations, assessing substance use disorders, termination of parental rights, and intellectual functioning.

- ✓ Assessment of reliability and validity of SVP commitment psychological evaluations
- ✓ Evaluation of the reliability and competency of investigative interviews of child victims, including use of suggestive questioning, children's memory, forensically defensible interviewing and in Child Sexual Abuse Accommodation Syndrome
- ✓ Expert testimony in Frye and Daubert hearings in the areas of Static-99, SRA-FV, PCL-R, psychopathy, and paraphilic conditions.

PROFESSIONAL EDUCATION

- ✓ Conducted training for the California District Attorney's Association, California Association of County Counsels, Sexual Offender Commitment Defense Association, American College of Forensic Psychology, Sexual Offender Civil Commitment Program Network, California Department of Mental Health, and the California Public Defender's Association in the areas of sexual offender profiling, accommodation syndrome, false memory syndrome, SVP risk assessments, and conducting sexual offender evaluations.
- ✓ Trained mental health and child welfare workers in the assessment and treatment of sexually abused children and their families, as well as in developing programs.
- ✓ Invited Speaker by Ministry of Justice in British Columbia, Canada and Norway to speak on developing child sexual abuse treatment programs.
- ✓ Presented in National conferences hosted by National Children's Hospital and C. Henry Kempe Center to present research studies and model programs.
- ✓ Peer reviewer for Journal of Interpersonal Violence, Open Access Journal of Forensic Psychology, and research proposals

PSYCHOTHERAPY & PROGRAM MANAGEMENT

- ✓ Field Practicum instructor for SJSU School of Social Work and UC Berkeley School of Social Welfare.
- ✓ Clinically assessed and treated more than 550 and supervised treatment of more than 700 adult and adolescent sexual offenders (including rapists).
- ✓ Directly or supervised treatment of more than 750 child sexual and physical abuse victims.
- ✓ Developed one of the initial adolescent sexual offender treatment programs in the United States

- ✓ For seven years, responsible for the operations of Giarretto Institute, the first Child Sexual Abuse Treatment Program established worldwide.
- ✓ Director for the Giarretto Institute Clinical and Professional Training programs for three years, being responsible for more than 40 licensed and intern therapists. Supervised 30 intern therapist as supervising therapist over five years.
- ✓ Co-developed the first Child Sexual Abuse Treatment Program in Honolulu, Hawaii.

INTERNATIONAL SPOKESPERSON

- ✓ National and international spokesperson for Giarretto Institute.
- ✓ Appeared on national television programs including Donahue, Late Night with Jane Whitney, Dr Dean Edell Show, to talk about issues related to child sexual abuse.
- ✓ Interviewed by local, national, and international print, radio, television news.
- ✓ Interviewed for documentaries aired by Swedish and Japanese television and on MTV.
- ✓

PROFESSIONAL EXPERIENCE

PRIVATE PRACTICE	1984 - current
GIARRETTO INSTITUTE Executive Director (1991-1998); Director of Clinical & Training Services (1988-1991); Supervising Therapist (1983-1988)	1983 - 1998
ALAMEDA COUNTY MENTAL HEALTH Psychiatric Social Worker	1986 - 1989
CATHOLIC SOCIAL SERVICES Program Coordinator and Clinician	1981 - 1982
DEPARTMENT OF SOCIAL SERVICES & HOUSING Child Protective Services Social Worker	1980 - 1981
KAPIOLANI CHILDREN'S MEDICAL CENTER Rape Crisis Worker	1978 - 1980

EDUCATION

Ph.D. Clinical Psychology- California Institute of Integral Studies, San Francisco, CA.	1990
Masters in Social Work- University of Hawaii at Manoa, Honolulu, HI.	1980
Bachelors of Art in Criminology, Corrections Concentration- CSU Sacramento, Sacramento, CA.	1978

PROFESSIONAL LICENSURE

California Licensed Clinical Psychologist- PSY18655	2002
California Licensed Clinical Social Worker- LCS10026	1983
Washington Licensed Clinical Psychologist- PY60248127	2011
Illinois Licensed Sexual Offender Evaluator- #271	2015

PROFESSIONAL AFFILIATIONS

Association for the Treatment of Sexual Abusers ("ATSA")

California Coalition on Sexual Offending

American Psychological Association

PEER AND NON-PEER REVIEWED PUBLICATIONS

Looman, J., Goldstein, S., & **Abbott, B. R.** (2018). The incremental validity of the Stable-2007 in an incarcerated sample, *Sexual Abuse: A Journal of Research and Treatment*, Accepted for publication.

Abbott, B. R. (2017). A case of the pot calling the kettle black: A rejoinder to Quinsey's canard. *ResearchGate*, October 29, 2017, http://dx.doi.org/10.13140/RG.2.2.22599.80803.

Abbott, B. R. (2017). Sexually violent predator risk assessments with the Violence Risk Appraisal Guide- Revised: A shaky practice. International Journal of Law and Psychiatry, In Press, April 8, 2017. DOI: 10.1016/j.ijlp.2017.03.003

Abbott, B. R. (2016a). Effect of the Stable-2007 on the probability of sexual recidivism risk as determined by the Static-99R: A closer inspection of data from Helmus and Hanson (2013). Available from author.

Abbott, B. R. (2016b). Effect of the Stable-2007 on the Probability of Sexual Recidivism Risk as Determined by the Static-99R: A Closer Inspection of Data from Looman and Goldstein (2015). Unpublished paper available upon request from author at brian@dr-abbott.net.

Abbott, B. R. (2015). Static-99R 2015 area under the curve results. Available from author.

Abbott, B. R. & Franklin, K. (2014). Static-99: A bumpy developmental path. Blog post published December 31, 2014. Available at: http://forensicpsychologist.blogspot.com/2014/12/ static-99-bumpy-developmental-path.html.

Abbott, B. R. (2013). The Utility of Assessing "External Risk Factors" When Selecting Static-99R Reference Groups. *Open Access Journal of Forensic Psychology*, 5, 89-118.

Abbott, B. R. & Donaldson, T.S. (2013). Is Reporting the Probability Estimate Sufficient in SVP Legal Proceedings? A Response to Elwood. ATSA Forum, 25(1), 1-4.

Donaldson, T. S., **Abbott, B. R.**, & Michie, C. (2012). Problems with the Static-99R prediction estimates and confidence intervals. *Open Access Journal of Forensic Psychology*, 4, 1-23.

Abbott, B. R. (2011). Throwing the Baby Out with the Bath Water: Is It Time for Clinical Judgment to Supplement Actuarial Risk Assessment? Journal of the American Academy for Law and Psychiatry. 39, 222-230.

Donaldson, T. S. & **Abbott, B. R.** (2011). Prediction in the Individual Case: An Explanation and Application of Its Use with the Static-99R in Sexually Violent Predator Risk Assessments. *American Journal of Forensic Psychology, 29(1), 5-35*

Abbott, B. R. (2010). Is the Static-99R preselected high risk group appropriate to compare the risk performance of individuals undergoing sexually violent predator risk assessments? Unpublished paper.

Abbott, B. R. & Donaldson, T.S. (2009). Base Rates and the Static-99R and 2002R. Available from author.

Abbott, B. R. (2009). Applicability of the new Static-99 experience tables in SVP risk assessments. *Sexual Offender Treatment.* 1, 1-24.

Abbott, B. R. (2008). The role of local base rate information in determining the accuracy of sexual recidivism actuarial instruments. *Perspectives*, (Fall, 2008). Available at www.ccoso.org/newsletter.php.

Abbott, B. R. (1995). Some family considerations in the treatment and case management of child sexual abuse. In T. Ney (Ed.), *Allegation in child sexual abuse cases: Assessment and management.* New York: Brunner/Mazel.

Abbott, B. R. (1995). Group Therapy. In C. Classen (Ed.), *Treating women molested as Children.* San Francisco: Jossey Bass.

Abbott, B. R. (1993). Sexual reoffense rates among incest offender eight years after leaving treatment. San Jose, CA.: Giarretto Institute.

Abbott, B. R. (1992) A Psycho-educational Group for Adult Incest Offenders and Adolescent Sexual Offenders. In M. Mckay & K. Paleg (Eds.), *Focal group psychotherapy.* Oakland, CA.: New Harbinger Press.

Abbott, B. R. (1990) Adolescent Sexual Offenders and Delinquent Adolescents: A Comparison of Intergenerational Family Dynamics and Traumas and Offense Characteristics, *Dissertation Abstracts,* (June).

RECENT TRAINING (CONDUCTED)

Abbott, B.R. (2019). Recent developments in SVP risk assessments. King County Office of Public Defense, The Defender Association Division, January 18, 2019, Seattle, WA.

Abbott, B.R. (2018). Avoiding common mistakes in the use of risk assessments in SVP cases. Sixth Annual Boston Symposium on Psychology and the Law, November 2, 2018, Boston, MA.

Abbott, B.R. (2018). Forensic application of static and dynamic risk measures: Is it the right time? Association for the Treatment of Sexual Abusers 37th Annual Research and Treatment Conference, Vancouver, BC, Canada, October 19, 2018.

Abbott, B. R. (2018). Pulling the Wool Over the Fact Finder's Eyes: Establishing Sexual Dangerousness in SVP Risk Assessments. American College of Forensic Psychology 34th Annual Symposium, San Diego, CA (April 15, 2018).

Abbott, B.R. (2017). Attacking risk assessments. California Public Defender's Association: Defending SVP cases, December 2, 2017, San Diego, CA.

Abbott, B. R. (2017). Latest developments in risk assessment for SVP civil commitment evaluations. Fifth Annual Boston Symposium on Psychology and the Law, November 4, 2017, Boston, MA.

Abbott, B. R. (2017). Can the accuracy of sexual recidivism actuarial measures be increased by considering dynamic risk factors? American College of Forensic Psychology 33rd Annual Symposium, San Diego, CA (April 6, 2017).

Abbott, B. R. (2016). Resorting to extreme measures to prove sexual dangerousness in SVP civil confinement psychological evaluations. American College of Forensic Psychology 32nd Annual Symposium, San Diego, CA (March 11, 2016).

Abbott, B. R. (2015). The weakest link in the diagnosed mental disorder: Serious difficulty controlling behavior. American College of Forensic Psychology 31st Annual Symposium, San Diego, CA (March 26, 2015).

Abbott, B. R. (2014). Utility of External Risk Factors in Selecting Static-99R Reference Groups. American College of Forensic Psychology 30th Annual Symposium, San Diego, CA (March 27, 2014).

Abbott, B.R. (2014). Clinically Adjusted Actuarial Approach: Pretext or Reliable Method? California Public Defenders' Association SVP Practice Seminar, Berkeley, CA (March 7, 2014).

Abbott, B.R. (2013). The Weakest Link in the Diagnosed Mental Disorder: Serious Difficulty Controlling Behavior. California Public Defender's Association, San Diego, CA (March 2, 2013).

Abbott, B.R. (2012). Demystifying, challenging and using risk assessments and evaluations. California Public Defender's Association, Cathedral City, CA (December 1, 2012).

Abbott, B.R. (2012). SVP Risk Assessment Issues. California Public Defender's Association, San Diego, CA (March 2, 2012).

Abbott, B.R. (2012). Scientifically Defensible Methods for Assessing Dangerousness of Sexually Violent Predators. Sexual Offender Civil Commitment Program Network 14th Annual Conference, Denver, CO (October 16, 2012).

Abbott, B.R. (2012). The weakest link in the diagnosed mental disorder: Serious difficulty in controlling behavior. Los Angeles Public Defender's Office, SVP Unit, Chatsworth, CA (June 21, 2012).

Halon, R., Abbott, B.R., Donaldson, T.S., & Jacquin, K.M. (2012). Citizen and expert witness: The role of psychologists in laws they are asked to address. American College of Forensic Psychology 28th Annual Symposium, San Francisco, CA (April 21, 2012).

Abbott, B.R. (2011). Overview of the State-of-the-Science Risk Assessments in SVP Commitments. Sexual Offender Commitment Defense Association Seminar, Chicago, IL (August 13, 2011).

Abbott, B.R. (2011). Do SVP risk assessments predict the likely criterion? California Public Defender's Association Defending SVP Cases Seminar, Berkeley, CA (July 9, 2011)

Abbott, B.R. (2011). 1+1 ≠ 2: Developments in Sexual Recidivism Actuarial Risk Assessment. COOSO Annual Conference, San Mateo, CA. (May 12, 2011)

Abbott, B.R. (2010). Using the Static-99R and Other Recent Developments in Actuarial Risk Assessment. CCOSO Bay Area Chapter, San Leandro, CA (October 25, 2010)

Abbott, B.R. (2010). Challenges of Applying Sexual Recidivism Actuarial Instruments in SVP Risk Assessments. California Department of Mental Health Sexual Offender Commitment Program. Monterey, CA (March 9, 2010).

Abbott, B.R. (2009). Use of 2008 Static-99 Experience Tables in Risk Assessments. CCOSO Annual Conference, Los Angeles, CA. (May 14, 2009).

Abbott, B.R. (2009). Use of the Static-99 risk data in SVP cases. The Defender Association, Seattle, WA. (April 16, 2009).

Abbott, B.R. (2009). Efficacy of the adjusted actuarial approach in assessing risk of sexually violent predators. Raising the Bar Conference, Los Angeles County Public Defender, Los Angeles, CA. (December 11, 2008).

Abbott, B.R. (2008a). Presenting Risk Assessment Findings: Keeping the Message Simple. Sex Offender Commitment Defense Association, Atlanta, GA (October 25, 2008).

Abbott, B.R. (June 2, 2007). The Adjusted Actuarial Risk Assessment Method with SVP's. Workshop conducted for the California Public Defender's Association, Studio City, CA.

Abbott, B.R. (September 25, 2006). Age and Sexual Recidivism. Workshop conducted for CCOSO, Bay Area Chapter.

Abbott, B.R. (October 6, 2005). Forensic Issues in Evaluating Adolescent Sexual Offenders. Grand Rounds Training at Stanford Center for Law and Psychiatry.

Abbott, B.R. (September 19, 2005). Administration and Scoring of the Static-99. Workshop conducted for CCOSO, Central Valley Chapter.

Abbott, B.R. (May 5, 2005). Accuracy of predicting individual recidivism risk using the Static-99. Workshop presented at the California Coalition on Sexual Offending.

SELECTED TRAINING (ATTENDED)

3.0 hours: Harris, A. J. R., Fernandez, Y., Olver, M., Looman, J., Abbott, B. R. & Kelly, S. (2018). Dynamic smackdown- dynamic assessment: Promise or pretext? ATSA 37th Annual Research and Treatment Conference, Vancouver BC, CA (October 19, 2018).

1.5 hours: Knight, R. & Longpre, N. (2018). Structure and covariance of the agonistic continuum: Assessment and treatment implications. ATSA 37th Annual Research and Treatment Conference, Vancouver, BC, Canada (October 19, 2018).

1.5 hours: Hanson, R. K., Thornton, D., & Kelly, S. (2018). Estimating real lifetime rates of sexual recidivism. ATSA 37th Annual Research and Treatment Conference, Vancouver, BC, Canada (October 18, 2018).

1.5 hours: Pedneault, C. I., Ciardha, C. O., & Bartels, R. M. (2018). Measures of pedophilic interest: How valid are they? ATSA 37th Annual Research and Treatment Conference, Vancouver BC, CA (October 18, 2018).

6.0 hours: Daniel Murrie, Ph.D. (2018). Addressing bias: Toward more objective, accurate assessments of sexual offenders. ATSA 37th Annual Research and Treatment Conference, Vancouver, BC, Canada (October 17, 2018).

3.0 hours: Anthony Beech, Ph.D. (2017). Challenges and debates in risk assessment: Moving the field forward or not? ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 25, 2017)

3.0 hours: Angela Eke, Ph.D. and Detective Sergeant Melanie Power. Online sexual offending against children. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 25, 2017)

1.5 hours: Michael Miner, Ph.D. (moderator). Sexual Offender Treatment Intervention Progress Scale (SOTIPS): Indications of utility and construct validity. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 26, 2017)

1.5 hours: Raymond Knight, Ph.D. (moderator). Hypersexuality: Unraveling its complexities and understanding its structure. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 26, 2017)

1.5 hours: Raymond Knight, Ph.D. (moderator). Empirically assessing individuals with sex offenses and major mental illness. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 26, 2017)

1.5 hours: Sarah Paquette, M.S., Ph.D. candidate (Moderator). Pedophilia: Taxometric properties, other atypical interests, and links between child pornography and child victims. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 27, 2017)

1.5 hours: Vernon L. Quinsey, Ph.D. (Moderator). Cross-validation, calibration, and risk communication using the VRAG-R. ATSA 36th Annual Research and Treatment Conference, Kansas City, MO (October 27, 2017)

3.5 hours: Apryl Alexander, Psy.D. (2016). Treating sexual offenders with serious mental illness. ATSA 35th Annual Research and Treatment Conference. Orlando, FL (November 2, 2016).

3.5 hours: Kim Spence, Ph.D. & Eric Imhof, Psy.D. (2016). Autism spectrum disorders versus paraphilic disorders: Evidence based practices in forensic evaluations for juveniles. ATSA 35th Annual Research and Treatment Conference. Orlando, FL (November 2, 2016).

7.0 hours: Boston Symposium on Psychology and the Law. Volition and the Law. Boston, MA (November 7, 2015).

7.0 Hours: Vernon Quinsey & Brian Judd (2015). The violence risk appraisal guide- revised (VRAG-R): Application to sex offenders. ATSA 34th Annual Research and Treatment Conference. Montreal, Canada (October 14, 2015).

3.5 hours: Michael Miner, Ph.D. (2014). Exploring the DSM-5: Implications and Applications for Sex Offender Assessment and Treatment. ATSA 33rd Annual Research and Treatment Conference. San Diego, CA (October 29, 2014).

3 hours: Jeffrey Abracen, Ph.D., Heather Moulden, Ph.D., & Jan Looman, Ph.D. Assessment and treatment of sexual offenders presenting with serious mental illness: Practical guidelines for clinicians. ATSA 33rd Annual Research and Treatment Conference. San Diego, CA (October 29, 2014).

6 hours: Philip Witt, Ph.D. and Michael H. Fogel, Psy.D. (2013). Forensic report writing: Principles and fundamentals. ATSA 32nd Annual Research and Treatment Conference. Chicago, IL (October 30, 2013).

3 hours. Randy K. Otto, Ph.D. Expert testimony: Effective communication in the courtroom. ATSA 32nd Annual Research and Treatment Conference. Chicago, IL (October 30, 2013).

3.5 hours: Howard Barbaree, Ph.D. (2012). Learning to Critically Appraise the Research Literature: Becoming a Discerning Consumer of the Research on Sexual Abuse. ATSA 31st Annual Research and Treatment Conference. Denver, CO. (October 17, 2012).

7 hours: Raymond Knight, Ph.D. and David Thornton, Ph.D. Assessment and diagnosis of rape-related sexual arousal patterns: Implications for current and future practice. Atascadero, CA (February 17, 2011).

14 hours: D. Thornton (2010). Structured Risk Assessment: Using the Forensic Version of SRA in Sex Offender Risk Assessment. Atascadero, CA (December 2 & 3, 2010).

3.5 hours: R. Wollert (2010). The Use of Probability Mathematics in Sexually Violent Predator Evaluations. California Department of Mental Health Sexual Offender Commitment Program. Monterey, CA (March 9, 2010).

3.5 hours: H. Barbaree (2010). The Effects of Aging on Sex Offender Recidivism. California Department of Mental Health Sexual Offender Commitment Program. Monterey, CA (March 10, 2010).

3.5 hours: R. Prentky (2010). Rapists: Classification, Diagnosis, Etiology. California Department of Mental Health Sexual Offender Commitment Program. Monterey, CA (March 10, 2010).

8 hours: D. Thornton & L. Helmus (2009). California DMH Training on Using and Interpreting Static-99R. Sacramento, CA. December 7, 2009

3.5 hour: R.K. Hanson & L. Helmus (2009). Actuarial Risk Assessment: The static-2002 training. ATSA 28th Annual Research and Treatment Conference. Dallas, TX. September 30, 2009.

3.5 hours: R.K. Hanson, A. Phenix, & L. Helmus (2009).Static-99 and static-2002: How to interpret and report scores in light of recent research. ATSA 28th Annual Research and Treatment Conference. Dallas, TX. September 30, 2009.

1.5 hours: L. Helmus, R.K. Hanson, D. Thornton, & H.E. Barbaree (2009). How well do current scales account for age and are adjustments necessary. ATSA 28th Annual Research and Treatment Conference. Dallas, TX. October 2, 2009.

7 hours in the use of the Stable 2007 by Andrew Harris, Ph.D. at ATSA Annual International Conference, October 23, 2008, Atlanta, GA
7 hours in the administration and scoring of the Juvenile Sexual Recidivism Risk Assessment Tool-II (JSORRAT-II) conducted by Douglas L. Epperson, Ph.D. May 10, 2006 at CCOSO annual conference. Update on use of (JSORRAT-II), CCOSO annual conference, May 11, 2007 (1-1/2 hours).

7 hours in assessment and treatment of Internet child pornography and attempted child molestation cases conducted by David Delmonico, Ph.D. at ATSA Annual International Conference, September 27, 2006, Chicago, IL.

14 hours in the use and scoring of the Hare PCL-R Second Edition conducted by Bob Hare, Ph.D. and Anna Salter, Ph.D. July 29 & 30, 2003.

EXPERT WITNESS TESTIMONY
(Does not include juvenile cases)

State of Mind at the Time of the Crime

People v. Cahn Tran
(Santa Clara County)
People v. Stephen Coulter
(San Benito County)
People v. Donald Bachman
(Santa Clara County)

Sexual Offenders[1]

People v. Henry Silva
(Santa Clara County)
People v. Sylvester Williams
(Santa Clara County)
People v. John Christensen
(Humboldt County)
People v. Armando Guizar
(Santa Clara County)
People v. David Ribbs
(Santa Clara County)
People v. Richard Patton
(Santa Clara County)
People v. Reighland Hoganas
(San Mateo County)
People v. Paul Luna
(Santa Clara County)
People v. Charles Hardrict
(Santa Clara County)
People v. Stephen Gallagher
(Santa Clara County)
People v. Jose Flores
(San Francisco County)
People v. Armando Cisneros
(San Diego County)
People v. Kenneth Sanford
(Santa Clara County)
In Re E.J.
(San Diego County)
People v. James Woodall
(Santa Clara County)
People v. Isekender Cingoz
(Contra Costa County)
People v. Ochoa
(Alameda County)
People v. Fritz
(Santa Clara County)
People v. Airo
(Santa Clara County)

Sexually Violent Predators[2]

People v. Terry Troglin
(Santa Clara County)
People v. Gilbert Moreno
(Santa Clara County)
People v. Lavern Sykes
(Santa Cruz County)
People v. Ramiro Gonzalez
(Santa Clara County) **People v. James Perkins**
(Santa Clara County)
People v. Kenneth Wallace
(Santa Clara County)
People v. Brian DeVries
(Santa Clara County)
People v. Jorge Rubio
(Monterey County)
People v. Robert Clark
(Santa Cruz County)
People v. Barry Whitley
(Contra Costa County)
People v. Kevin Shumake
(Contra Costa County)
People v. Ronald Rose
(Santa Clara County)
People v. Ellis Jones
(Los Angeles County)
People v. Hernan Orozco
(Los Angeles County)
People v. Anthony Iannalfo
(Los Angeles County)
People v. Steven Force
(Orange County)
People v. Timothy Wright
(El Dorado County)
People v. Robert Wenzel
(San Diego County)
In Re Detention of Darrell Stewart
(Kings County, WA)
People v. Michael Odom
(San Diego County)
People v James Glenn
(San Bernardino County)
People v Scott Syzmanski
(San Diego County)
People v. Brian Schuler
(Santa Clara County)
People v Robert Tighe
(San Diego County)
People v. Helio Vallarta
(San Diego County)
People v. Michael Alston
(Sonoma County)
People v. John Morgan
(Lake County)
People v. Rodney Ransom
(Los Angeles County)
People v Mark S.
(Los Angeles County)
People v. Dennis Boyer
(San Diego County)
People v. Carlos Paniagua
(San Francisco County)
People v. Harvey Leonard
(Placer County)
In Re: the Detention of Richard Hosier
(King County, WA)
People v. Richard Gomberg
(Santa Clara County)
In Re: the Detention of Spicer
(Grant County, WA)
People v. Garfield Magpie
(San Francisco County)
People v. Michael St. Martin
(San Diego County)
People v. Edward Martinez
(San Diego County)
People v. Willie Roy Jenkins
(Kern County)
People v. Rex McCurdy
(Napa County)
People v. John Cline
(Contra Costa County)
People v. Mark Zavala
(Fresno County)
People v. Jaffar Oliver
(Solano County)
People v. Ronald Rose
(San Diego County)
People v. M. Martinez
(San Diego County)
People v. Herbert Willmes
(Santa Clara County)
People v. Jimmie Otto
(Solano County)

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[1] Testimony areas included sentencing mitigation, nondisposition to commit sex crimes, child sexual abuse accommodation syndrome, and children's memory and forensic interviewing of children.

[2] Unless otherwise noted, testimony areas included diagnosis of legal mental disorder, risk assessment, or both topics.

People v. Guess
(Solano County)
People v Allman
(San Diego County)
People v. John Hendrickson
(Humboldt County)
People v. Herman Smith
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In Re the matter of Peter Leos
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In Re detention of Cory West
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State v. Matthew Ackerman
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In re the matter of Dushan Nickolich
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In the Matter of the Care & Treatment of Stanley Williams
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Daubert hearing on admissibility of other specified paraphilic disorder, nonconsent. Court ruled other specified paraphilic disorder nonconsent not admissible under Frye or Daubert.

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Sex Offender Commitment Program

CALIFORNIA STATE AUDITOR

Sex Offender Commitment Program

Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work

July 2011 Report 2010-116

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July 12, 2011 2010-116

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the state's Sex Offender Commitment Program (program), which targets a narrow subpopulation of sex offenders (offenders)—those who represent the highest risk to public safety because of mental disorders. Our analysis shows that between 2007 and 2010 less than 1 percent of the offenders whom the Department of Mental Health (Mental Health) evaluated as sexually violent predators (SVPs) met the criteria necessary for commitment.

Our report concludes that the Department of Corrections and Rehabilitation (Corrections) and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Legislature designed the Sex Offender Commitment Program (program) to target a narrow subpopulation of sex offenders (offenders): those who represent the highest risk to public safety because of mental disorders. However, between 2007 and 2010, very few offenders whom the Department of Mental Health (Mental Health) evaluated as potential sexually violent predators (SVPs) met the criteria necessary for commitment. As a result, the courts ultimately committed only a small percentage as SVPs even though Mental Health received more than 6,000 referrals in each of these years from the Department of Corrections and Rehabilitation (Corrections). Our analysis suggests that Corrections' and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work.

The current inefficiencies in the program's process for evaluating potential SVPs are in part the result of Corrections' interpretation of state law. The inefficiencies were compounded by recent changes made by Jessica's Law. Specifically, when California voters passed Jessica's Law (Proposition 83) in 2006, they added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one; therefore, many more offenders became potentially eligible for commitment to the program. Corrections, in consultation with its Board of Parole Hearings (Parole Board), referred *all* offenders who had committed sexually violent offenses to Mental Health for evaluation as potential SVPs without first considering other factors, as required by law. Consequently, the number of referrals Corrections made to Mental Health increased dramatically, from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was effective.

However, Corrections' referral of every offender who has committed a sexually violent crime was not the intent of state law, which specifically mandates that Corrections determine when making referrals whether offenders' crimes were predatory and whether the offenders meet other criteria before referring them as potential SVPs. We believe that if Corrections screened offenders more closely before referring them to Mental Health, the number of Corrections' referrals might drop significantly. For example, in our review, we noted several instances in which Corrections referred offenders whose crimes were not predatory under the law's definition. Further, 45 percent of Corrections' referrals since 2005 involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs (SVP criteria). Although state law does

Audit Highlights . . .

Our review of the state's Sex Offender Commitment Program (program) between January 2005 and September 2010 revealed the following:

» *The Department of Corrections and Rehabilitation (Corrections) sent more than 6,000 referrals each year from 2007 through 2010 to the Department of Mental Health (Mental Health) for evaluation as potential sexually violent predators (SVPs).*

» *Many more offenders became potentially eligible for commitment to the program when California voters approved Jessica's Law (Proposition 83)—the law added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one.*

» *Because Corrections referred all offenders who had committed sexually violent offenses to Mental Health for evaluation, this also contributed to the number of referrals increasing from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was in effect.*

- *We noted several instances in which Corrections referred offenders whose crimes were not predatory under the law.*
- *Since 2005, 45 percent of the referrals involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs.*

» *Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates as required and, thus, shortened the time available for Mental Health to perform reviews and schedule evaluations.*

continued on next page . . .

- *Although Mental Health's evaluation process appears to have been effective, for a time it sometimes assigned one evaluator, rather than the two required.*
- *Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings, however, the state law that expressly allows Mental Health to use contractors expires in 2012.*
- *Mental Health did not submit required reports to the Legislature about its efforts to hire staff to evaluate offenders and about the impact of Jessica's Law on the program.*

not specifically require Corrections to consider the outcomes of previous screenings or evaluations when making referrals, the law directs Corrections to refer only those offenders it deems likely to be SVPs, and we believe that it is logical and legal for Corrections to take into account Mental Health's previous conclusions about specific offenders when reaching such determinations. Additionally, Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates, as required by state law. These late referrals shortened the time available for Mental Health to perform reviews and schedule evaluations.

To handle the high number of offenders referred by Corrections, Mental Health put into place processes that enable it to determine whether offenders are possible SVPs before scheduling full evaluations. We believe that these processes are appropriate given that Corrections refers offenders without first determining whether their crimes were predatory and whether the offenders are likely to be SVPs. Specifically, when Mental Health receives a referral from Corrections, it first conducts an administrative review to ensure that it has all of the information necessary to make a determination. It then conducts a clinical screening—a file review by a psychologist—to rule out any offender who is not likely to meet SVP criteria and thus does not warrant a full evaluation. Between February 2008 and June 2010, Mental Health also used administrative reviews to identify offenders whom it had previously screened or evaluated and whose new offenses or violations were unlikely to change the likelihood that they might be SVPs. Mental Health rescinded this policy in June 2010. We also noted that for a short time, Corrections had a similar policy that it also rescinded. Nonetheless, we believe Mental Health should work with Corrections to reduce unnecessary referrals.

After completing the administrative reviews and clinical screenings, Mental Health conducts full evaluations of potential SVPs, a process that involves face-to-face interviews unless offenders decline to participate. Although we found that in general Mental Health's evaluation process appears to have been effective, we noted that for a time it did not always assign to cases the number of evaluators that state law requires. After the passage of Jessica's Law, Mental Health relied on the opinion of one evaluator rather than two when concluding that 161 offenders did not meet SVP criteria. Mental Health's program manager stated that Mental Health temporarily followed this practice of using just one evaluator because it did not have adequate staff to meet its increased workload. She also indicated that Corrections referred 98 of the offenders again, and Mental Health determined during subsequent screenings and evaluations that they did not meet SVP criteria.

A potential challenge that Mental Health faces in meeting its increased workload involves the mental health care professionals who perform its evaluations. Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings. However, when the state law that expressly permits Mental Health to use contractors expires in 2012, Mental Health will need to justify its continued use of contractors, which the State Personnel Board has ruled against in the past.[1] According to a program manager, Mental Health primarily uses contracted evaluators to perform the evaluations because the staff psychologists are still completing the necessary experience and training. Mental Health stated that it has had difficulty attracting qualified evaluators to state employee positions because the compensation is not competitive for this specialized area of forensic mental health clinical work. To remedy the situation, Mental Health is working to establish a new position that will provide more competitive compensation. If Mental Health has not hired sufficient staff by 2012, the program manager stated that it plans to propose a legislative amendment to extend the authority to use contractors.

Finally, Mental Health did not submit to the Legislature required reports about the department's efforts to hire staff to evaluate offenders and the impact of Jessica's Law on the program. Mental Health did not provide us with a timeline indicating the expected dates for completing these reports, nor did the department explain why it had not submitted them. Without the reports, the Legislature may not have the information necessary for it to provide oversight and make informed decisions.

Recommendations

To increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the referral process to adhere more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.

[1] State law requires Mental Health to use contractors for third and fourth evaluations when the first two evaluators disagree. The change of law in 2012 will not affect Mental Health's use of contractors for this purpose.

- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.

- Assessing the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier before each offender's scheduled release date in order to meet its six-month statutory deadline.

To make certain that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and the impact of Jessica's Law on the program.

Agency Comments

Mental Health indicated that it is taking actions that are responsive to each of our recommendations. For example, Mental Health stated it is already working with Corrections to streamline the referral process to eliminate duplicate effort and increase efficiency.

Corrections indicated that it agrees that improvements can be made in streamlining the referral process and that it has already implemented steps to improve the timeliness of its referrals to Mental Health. Corrections stated that it would address the specific recommendations in its corrective action plan at 60-day, six-month, and one-year intervals.

Introduction

Background

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State law designates these offenders as sexually violent predators (SVPs).

The Sexually Violent Predator Act (Act) governs the program. The Act lists crimes that qualify as sexually violent offenses and defines *predatory* to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization. The Act also requires that SVPs have diagnosed mental disorders that make them likely to engage in future sexually violent behavior if they do not receive appropriate treatment and custody. Determining whether offenders are SVPs and committing them for treatment is a civil rather than criminal process. Thus, crimes that offenders committed before passage of the Act can contribute to offenders' commitment as SVPs.

Since the passage of the Act, certain state laws have further amended the program. Specifically, in September 2006, Senate Bill 1128 became law and added more crimes to the list of sexually violent offenses that could cause offenders to qualify as SVPs. More dramatically, on November 7, 2006, California voters passed Proposition 83, also known as Jessica's Law.[2] In addition to creating residency restrictions and global positioning system monitoring for certain sex offenders, Jessica's Law added more crimes to the list of sexually violent offenses, and it also decreased from two to one the number of victims necessary for the SVP designation. Both Senate Bill 1128 and Jessica's Law abolished the previous two-year term of civil commitment for an SVP and instead established a commitment term of indeterminate length that includes yearly evaluations to determine an SVP's readiness for release.

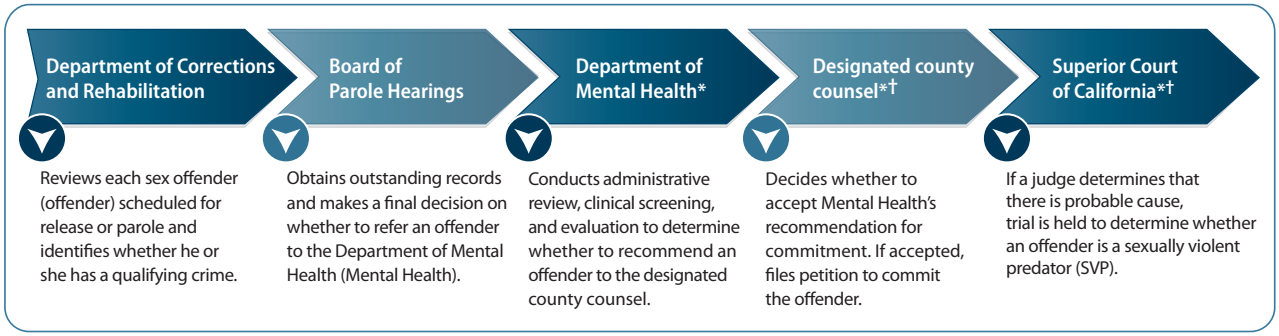
The Process for Identifying, Evaluating, and Committing SVPs

The Department of Mental Health (Mental Health) and the Department of Corrections and Rehabilitation (Corrections), including its Board of Parole Hearings (Parole Board), play critical roles in identifying, evaluating, and recommending the commitment of an offender as an SVP. However, a judge or jury

[2] The law was named in memory of Jessica Lunsford, a nine-year-old girl from Florida who died in 2005 as a result of a violent sexual crime committed by a previously convicted sex offender.

at a California superior court makes the final determination of an offender's SVP status. Figure 1 shows the relationships among the steps in the process. If at any point in this process an offender fails to meet SVP criteria, the offender completes the term of his or her original sentence or parole.

Figure 1
The Multiagency Process for Committing a Sexually Violent Predator



Sources: Mental Health, Department of Corrections and Rehabilitation, Board of Parole Hearings, and California Welfare and Institutions Code, Section 6600 et seq.

* During this phase of the process, the agency may find that the offender does not meet SVP criteria, in which case the offender completes the term of his or her original sentence or parole.

† Recommendation is made to the designated counsel in the county where the offender was convicted most recently. The designated counsel files the request to commit in the same county.

Corrections' Identification of Potential SVPs

State law requires Corrections and its Parole Board to screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories. To complete these screenings, the law requires Corrections to use a structured screening instrument developed and updated by Mental Health in consultation with Corrections. According to state law, when Corrections determines through this screening process that offenders may be SVPs, it must refer the offenders to Mental Health for further evaluation at least six months before the offenders' scheduled release dates.[3]

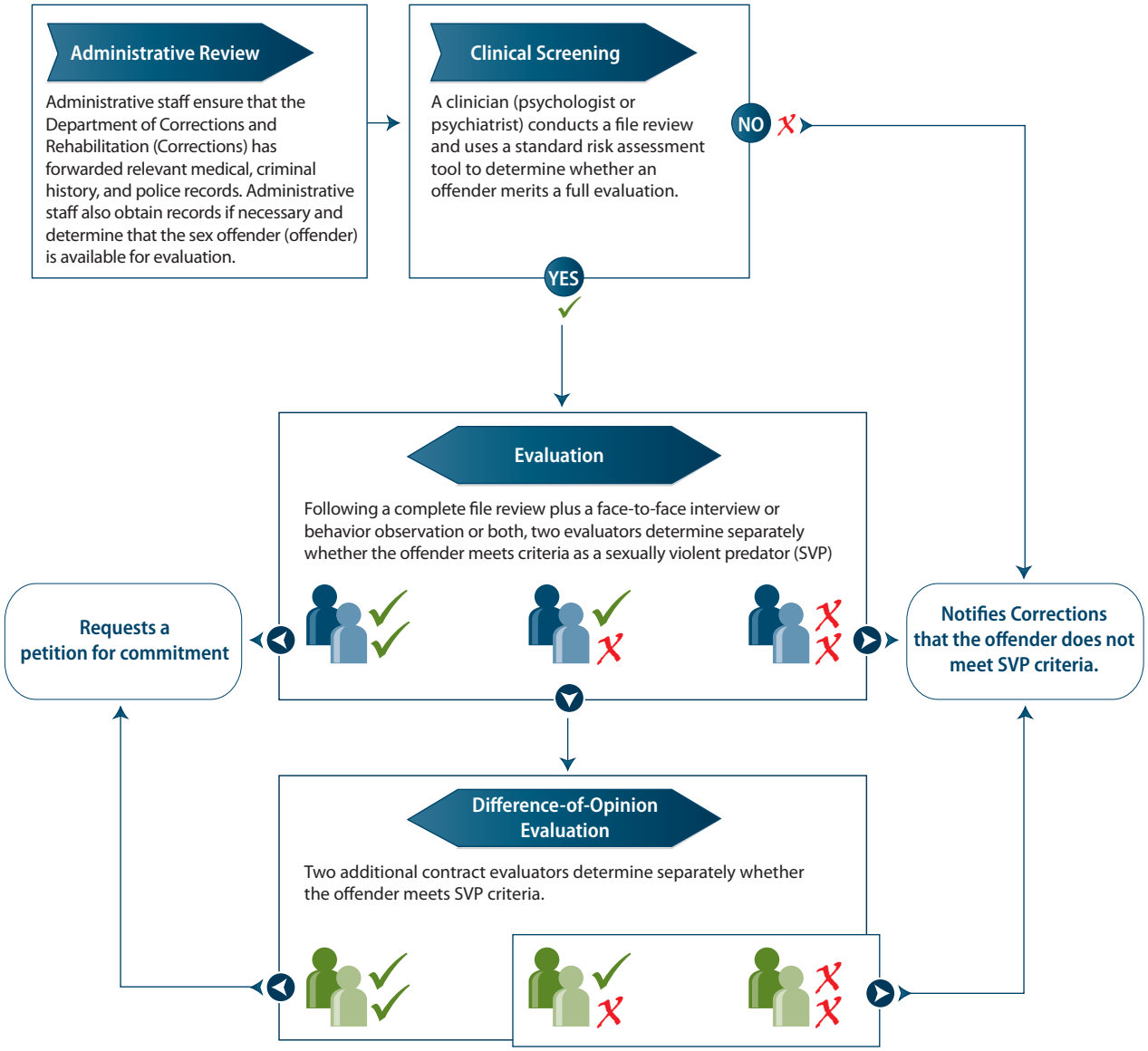
Mental Health's Evaluation of Potential SVPs

State law requires that Mental Health evaluate as potential SVPs any offenders whom Corrections refers to Mental Health. It specifies that for each of these offenders, Mental Health must conduct a full evaluation consisting of assessments by two mental health professionals who must be psychiatrists or psychologists. However, in practice, Mental Health does not conduct an evaluation of every offender

[3] If the offender has been in Corrections' custody for less than nine months or if judicial or administrative action modified his or her release date, the sixth-month timeline does not apply.

referred by Corrections; rather, it first conducts an administrative review and then a clinical screening to determine whether an offender merits an evaluation. We discuss these administrative reviews and clinical screenings in more detail later in the report. Figure 2 illustrates the process that Mental Health uses to determine whether it should recommend to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) the offenders referred by Corrections for commitment to the program.

Figure 2
Department of Mental Health's Process for Reviewing, Screening, and Evaluating a Sex Offender



Sources: California Welfare and Institutions Code, Section 6601 et seq. and program manager for the Department of Mental Health's Sex Offender Commitment Program.

Indicators That a Sex Offender Is a Sexually Violent Predator

The Department of Mental Health (Mental Health) uses the following criteria defined in state law and clarified by court decisions to determine whether a sex offender is a sexually violent predator (SVP):

- The individual has been convicted of a sexually violent offense, such as rape when committed with force, threats, or other violence.
- The offender suffers from a diagnosed mental disorder.
  - The law defines *diagnosed mental disorder* as including conditions affecting the emotional and volitional capacity that predispose the person to committing criminal sexual acts to a degree that the person is a menace to the health and safety of others.
  - Most diagnoses involve paraphilia or related disorders—sexual behavior that is atypical and extreme and that causes distress to the individual or harm to others. However, other disorders may qualify under the law.
- The diagnosed mental disorder makes the person likely to engage in sexually violent, predatory criminal behavior in the future without treatment and custody.
  - The law defines *predatory* offenses as acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purpose of victimization.
  - Regulations require evaluators to use standardized risk assessment tools and to consider various risk factors to determine the likelihood that an offender will commit future crimes.

Sources: Bureau of State Audits' review of case files, interviews of Department of Mental Health staff and evaluators, analysis of California Welfare and Institutions Code, Section 6600 et seq., Title 9 of the California Code of Regulations, and California Supreme Court decisions.

State law requires Mental Health's evaluators to determine whether the offender meets the criteria for the SVP designation (SVP criteria), which the text box describes in more detail. If the first two evaluators agree that the offender meets the criteria, Mental Health must request a petition for civil commitment, as discussed in the next section. If the first two evaluators disagree, the law requires that Mental Health arrange for two additional evaluators to perform evaluations. The two additional evaluators must meet certain professional criteria and cannot be employees of the State. If the two additional evaluators agree that the offender meets the criteria, Mental Health must request a commitment. If the two additional evaluators disagree or if they agree that the offender has not met the criteria, Mental Health generally cannot request a commitment unless it believes the evaluator applied the law incorrectly.

The Court's Commitment and the State's Treatment of SVPs[4]

When Mental Health's evaluators conclude that an offender meets SVP criteria, state law requires that Mental Health request that the designated counsel of the county in which the offender was most recently convicted file a petition in court to commit the offender. If the county's designated counsel agrees with Mental Health's recommendation, he or she must file in superior court a petition for commitment of the offender. If a judge finds probable cause that the offender is an SVP, he or she orders a trial for a final determination of whether the offender is an SVP. If the offender or petitioning attorney does not demand a jury trial, the judge conducts the trial without a jury. During the court proceedings, offenders are entitled to representation by legal counsel and medical experts. Each county's board of supervisors appoints a designated counsel, the district attorney or county counsel responsible for handling SVP cases.

[4] We did not audit the designated counsels, the courts, or the actual treatment programs because they were outside the scope of our review.

The court commits offenders it finds are SVPs to secure facilities for treatment, and these commitments have indeterminate terms. According to Mental Health's program manager, in May 2011 there were 521 male SVPs and one female SVP committed to state hospitals. State law requires that Mental Health examine the mental condition of committed SVPs at least once a year. If Mental Health determines that offenders either no longer meet SVP criteria or that less restrictive treatment would better benefit them yet not compromise the protection of their communities, Mental Health must ask a court to review their commitments for unconditional discharge or for conditional release.[5] If the court grants conditional releases to committed SVPs, they will enter community treatment and supervision under the Conditional Release Program, which Mental Health operates. According to Mental Health's program manager, the department has eight SVPs in the Conditional Release Program as of May 2011.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to review the process that Corrections and its Parole Board use to refer offenders to Mental Health as well as Mental Health's process for evaluating these offenders to determine whether they qualify as SVPs. Specifically, the audit committee directed us to determine whether Mental Health's process includes a face-to-face interview for every sex offender referred by Corrections, whether Mental Health uses staff or contractors to perform the evaluations, and whether the evaluators' qualifications meet relevant professional standards and laws and regulations. If we determined that Mental Health uses contractors, the audit committee directed us to determine when the practice began and whether using contractors is allowable under state law. To understand the impact of Jessica's Law on the program, the audit committee directed us to identify the number of offenders that Corrections and its Parole Board referred to Mental Health in each year since 2006. The audit committee also asked us to identify the number of referred offenders who received an in-person screening by Mental Health, the number screened by Mental Health through case-file review only, the number of offenders that ultimately received a civil commitment to the program, and the number of offenders released who then reoffended. Finally, the audit committee asked us to determine whether Mental Health submitted reports mandated by the Legislature. Table 1 lists the methods we used to answer these audit objectives.

[5] Nothing in the Act prohibits committed SVPs from asking courts to release them even if the SVPs do not have a recommendation from Mental Health.

The scope of the audit did not include reviews of the designated counsels' efforts or the courts' processes for committing offenders as SVPs. The scope also did not include the treatment provided to offenders at state hospitals or through the Conditional Release Program.

Table 1
Methods of Addressing Audit Objectives

AUDIT OBJECTIVE	METHOD
Understand the criteria for committing sexually violent predators (SVPs) under the Sex Offender Commitment Program (program).	Reviewed relevant laws, regulations, and other background materials.
Review the process at the Department of Corrections and Rehabilitation (Corrections) and the Board of Parole Hearings for identifying and referring potential SVPs to the Department of Mental Health (Mental Health).	• Interviewed key officials from the Classification Services Unit of Corrections' Division of Adult Institutions and from the Board of Parole Hearings. • Reviewed Corrections' policy manuals.
Understand the process at Mental Health for screening and evaluating potential SVPs.	• Interviewed key officials at Mental Health's Long-Term Care Services Division. • Interviewed evaluators under contract to Mental Health. • Reviewed Mental Health's policy manuals.
Assess the effectiveness of Corrections' and Mental Health's processes for referring, screening, and evaluating offenders.	Reviewed Mental Health's case files, clinical screening forms, and written evaluations of sex offenders (offenders). Review of case files included Corrections' referral packets.
Determine the extent to which contractors perform evaluations. Assess the qualifications of contractors who conduct evaluations and of state employees who could also conduct evaluations.*	• Reviewed bidding documentation, contracts, and relevant supporting documents, as well as personnel files. • Reviewed the qualifications required by law. • Analyzed data from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database).†
Identify the number of offenders whom Corrections referred to Mental Health. Determine the number of assessments, screenings, and evaluations that Mental Health performed. Identify the number of offenders whom courts ultimately committed as SVPs. Determine the recidivism rate of those not committed as SVPs. Assess the impact of Jessica's Law on the program.	Analyzed data from Mental Health's database and from Corrections' Offender Based Information System.†
Determine whether Mental Health complied with the requirement to report to the Legislature the status of its efforts to hire state employees to replace contractors. Determine whether Mental Health complied with the requirement to report to the Legislature the impact of Jessica's Law on the program.	Requested copies of required reports. Interviewed key officials at Mental Health and at the California Health and Human Services Agency.

Sources: Joint Legislative Audit Committee audit request #2010-116 for audit objectives, Bureau of State Audits' planning and scoping documents, and analysis of information and documentation identified in the table column titled Method above.

* We did not note any reportable exceptions related to the qualifications of the contractors who conduct evaluations or the state employees who could also conduct evaluations. The contractors met the qualifications required of them by state law as well as the more stringent requirements that Mental Health imposed through its competitive contracting process. As the Audit Results section of this report discusses, state employees have rarely conducted evaluations to date. However, all of the program's state-employed consulting psychologists who conduct clinical screenings met the minimum qualifications specified by the Department of Personnel Administration for their positions.

† We assessed the reliability of the data in these systems and reported our results beginning on page 11.

To address several of the audit objectives approved by the audit committee, we relied on data provided by Mental Health and Corrections. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information. To comply with this standard, we assessed each system for the purpose for which we used the data in this report. We assessed the reliability of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process (as displayed in Table 3 on page 14), and the extent to which contractors perform evaluations (as displayed in Figure 5 on page 31). Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy and completeness of Mental Health's database. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For completeness testing, we haphazardly sampled 29 referrals and tested to see if these referrals exist in the database and found no errors. For accuracy testing, we selected a random sample of 29 referrals and tested the accuracy of 21 key fields for these referrals. Of the 21 key fields tested we found three errors in six key fields. Based on our testing and analysis, we found that Mental Health's database is not sufficiently reliable for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process, and the extent to which contractors perform evaluations. Nevertheless, we present these data as they represent the best available source of information.

In addition, we assessed the reliability of Corrections' Offender Based Information System (Corrections' database) for the purpose of identifying the number of referrals that ultimately resulted in an offender's being committed as an SVP, and the recidivism rate of those not committed as SVPs. Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy of Corrections' database. We did not perform completeness testing because the documents needed are located at the 33 correctional institutions located throughout the State, so conducting such testing is impractical. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For accuracy testing, we selected a random sample of 29 offenders and tested the accuracy of 12 key fields related to these offenders and found eight errors. Based on our testing and analysis, we found that Corrections' database is of undetermined reliability to be used for the purpose of identifying the number of referrals that ultimately resulted in an offender being committed as an SVP, and to calculate the recidivism rate of those not committed as SVPs.

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Audit Results

Although the Department of Mental Health Evaluates Thousands of Offenders Each Year, the Courts Commit Only a Tiny Percentage as Sexually Violent Predators

As the Introduction explains, the passage of Jessica's Law in 2006 resulted in significantly more sex offenders (offenders) becoming potentially eligible for commitment as sexually violent predators (SVPs) under the Sex Offender Commitment Program (program). However, the courts have committed very few of the thousands of offenders whom the Department of Corrections and Rehabilitation (Corrections) referred to the Department of Mental Health (Mental Health) for evaluation. In fact, as Table 2 shows, the actual number of offenders whom the courts committed between 2007 and 2010 represent less than 1 percent of Corrections' referrals to Mental Health. Even if the courts committed all of the offenders still awaiting trial, these offenders would represent less than 2 percent of all referrals. Due to the limitations of its database, Mental Health did not track the specific reasons why referred offenders did not meet the criteria for commitment as SVPs (SVP criteria). Such tracking could help Mental Health better identify trends.

Table 2
Number of Program Referrals and Commitments
2005 Through 2010

	2005	2006	2007	2008	2009	2010*
Total referrals	512	1,850	8,871	7,338	6,765	6,126
Total commitments†	15	27	43	16	3	0
Commitments as a percentage of total referrals each year	2.93%	1.46%	0.48%	0.22%	0.04%	-

Source: Bureau of State Audits' analysis of data collected from the Department of Mental Health's (Mental Health) Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

Jessica's Law Has Not Resulted in the Commitment of Many More Offenders

As the Introduction discusses, Jessica's Law expanded the population of offenders eligible for the program and thus substantially increased the number of evaluations that

Mental Health has performed each year. Table 3 shows that since the passage of Jessica's Law, the total number of Corrections' referrals of offenders to Mental Health ballooned from 1,850 in 2006 to 8,871 in 2007. As a result, the number of offenders whom Mental Health reviewed or evaluated at each stage of its process also increased from 2006 to 2007. Mental Health completed administrative reviews for nearly 96 percent of the referrals it received from Corrections.[6] Mental Health then forwarded about half of these cases to clinical screenings in which clinicians determined whether the offenders merited full evaluations.[7] The number of these evaluations that Mental Health performed rose from 594 in 2006 to 2,406 in 2007. Although the number of evaluations dropped from its high point in 2007, the number was still four times higher in 2010 than in 2005, the year before Jessica's Law took effect.

Table 3
Number of Referrals in Each Step of the Sexually Violent Predator Commitment Process
2005 Through 2010

ENTITY	STEP IN THE COMMITMENT PROCESS	2005	2006	2007	2008	2009	2010*	TOTAL	PERCENTAGE OF TOTAL REFERRALS
Department of Corrections and Rehabilitation	Referrals to Mental Health	512	1,850	8,871	7,338	6,765	6,126	31,462	100.0%
Department of Mental Health (Mental Health)	Administrative reviews	509	1,448	8,230	7,137	6,738	6,013	30,075	95.6
	Clinical screenings†	1	304	4,400	3,537	3,470	3,823	15,535	49.4
	Evaluations	217	594	2,406	1,366	966	887	6,436	20.5
	Recommendations to designated counsel	48	92	181	99	52	51	523	1.7
The Court System	Designated counsel petitions	46	88	169	92	39	23	457	1.5
	Probable cause hearings	46	88	169	92	38	23	456	1.4
	Trials	37	77	150	72	22	4	362	1.2
	Offenders committed‡	15	27	43	16	3	0	104	0.3

Source: Bureau of State Audits' analysis of data collected from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† According to Mental Health's program manager, Mental Health did not implement clinical screenings until sometime in 2006.

‡ These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

[6] The total number of referrals to Mental Health does not agree with the number of referrals that Mental Health reviewed in part because the department did not consistently record in its database that it had completed reviews.

[7] According to Mental Health's program manager, the department introduced the clinical screening into its process specifically to address the dramatic rise in referred offenders that Jessica's Law prompted. We discuss these screenings in more depth later in the report.

Despite the increased number of referrals, as of September 2010, the relative percentage of offenders whom the courts committed as SVPs declined each year after the first full year that Jessica's Law was in effect. According to Mental Health's program manager, about 300 offenders are still awaiting trial. Nevertheless, even if the courts committed all of those awaiting trial, the total number committed would still represent a tiny fraction of all referrals from Corrections. As Table 3 shows, Mental Health screened a large number of offenders referred by Corrections, indicating that neither department displayed a lack of effort in identifying eligible SVPs. However, despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law.

Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism. Additionally, Mental Health's program manager provided an analysis it performed of the types of crimes offenders committed who it recommended for commitment to designated counsels since Jessica's Law took effect. This analysis found that, for every recommendation associated with an offender who committed one of the new crimes added by Jessica's Law, Mental Health made four recommendations related to offenders who committed crimes that would have made them eligible for commitment before the passage of Jessica's Law. This disparity could suggest that crimes added under Jessica's Law as sexually violent offenses correlate less with the likelihood that offenders who commit such crimes are SVPs than do the crimes designated in the original Sexually Violent Predator Act.

Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts.

Because Mental Health Has Not Tracked the Reasons Offenders Did Not Qualify as SVPs, It Cannot Effectively Identify Trends and Implement Changes to Increase Efficiency

Although analyzing Mental Health's data allowed us to determine the number of referrals at each step of the process, the data lack sufficient detail for us to determine why specific offenders' cases did not progress further in that process. For example, the data did

not show the number of offenders that Mental Health declined to forward to evaluations because the offenders did not have mental disorders rather than because they did not commit predatory crimes. Although the database includes a numeric code that can identify Mental Health's detailed reason for determining why an offender does not meet SVP criteria, Mental Health did not use these codes for the results of its clinical screenings. Instead, when a clinician determined that the offender did not meet SVP criteria, the numeric code used indicated only that the result was a negative screening and was not specific to the clinician's conclusions recorded on the clinical screening form. For offenders whom Mental Health determines do not meet SVP criteria based on evaluations, Mental Health's database has detailed codes available that convey the specific reasons for its decisions on cases. However, for the period under review, Mental Health did not consistently use the codes. According to the program manager, in January 2009 Mental Health stopped using the detailed codes because it determined that the blend of codes used to describe a full evaluation were too confusing and did not result in meaningful data. Because Mental Health did not use the codes consistently, it could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria.

Mental Health could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria because it did not use codes for its database consistently.

We examined some of the conclusions recorded by Mental Health's psychologists on their clinical screening forms, and we found that the psychologists provided specific reasons for their conclusions that offenders did not meet SVP criteria. For example, some offenders did not meet the criteria because they were not likely to engage in sexually violent criminal behavior, while in other cases the offenders lacked diagnosed mental disorders. Because clinicians do identify the specific reasons for their conclusions on their screening forms, Mental Health should capture this information in its database so that it can inform itself and others about the reasons offenders throughout the program do not meet SVP criteria.

Additionally, although the documented reasons why individual offenders are in Corrections' custody are available to Mental Health, the department cannot summarize this information across the program. This situation prevents Mental Health from tracking the number of offenders that Corrections referred because of parole violations as opposed to new convictions. According to the program manager, Mental Health cannot summarize these data because some of the information appears in the comments or narrative case notes boxes in Mental Health's database. As a result, we used Corrections' data, not Mental Health's, to provide the information in this report about the reasons that offenders were in Corrections' custody during the period that we reviewed. By improving its ability to summarize this type of data, Mental Health could better inform itself and Corrections about trends in the

reasons offenders do not qualify for the program. Mental Health could then use its knowledge of these trends to improve the screening tool that Corrections uses to identify potential SVPs. As of June 2011, Mental Health's program manager indicated that the program is submitting requests to the department's information technology division to upgrade the database to track this type of information.

Few Offenders Have Been Convicted of Sexually Violent Offenses Following a Decision Not to Commit Them

To take one measure of the effectiveness of the program's referral, screening, and evaluation processes, we analyzed data from Corrections and Mental Health to identify offenders who were not committed as SVPs but who carried out subsequent parole violations and felonies. In particular, we looked for instances in which these offenders later perpetrated sexually violent offenses. As Table 4 on the following page shows, 59 percent of these offenders whom Corrections released between 2005 and 2010 subsequently violated the conditions of their paroles. To date, only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed. Although higher numbers of offenders were subsequently convicted of felonies that were not sexually violent offenses, even those numbers were relatively low.

Only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed.

Corrections' Failure to Comply With the Law When Referring Offenders Has Significantly Increased Mental Health's Workload

State law outlines Corrections' role in referring offenders to Mental Health for evaluation as potential SVPs. Specifically, Section 6601(b) of the California Welfare and Institutions Code mandates that Corrections and its Board of Parole Hearings (Parole Board) screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories and then determine if they are likely to be SVPs. However, in referring offenders, Corrections and the Parole Board did not screen offenders based on all of these criteria. As a result, Corrections referred many more offenders to Mental Health than the law intended. Moreover, Corrections' process resulted in a high number of re-referrals, or referrals of offenders that Mental Health previously concluded were not SVPs. State law does not prevent Corrections from considering the results of past evaluations, and we believe that revisiting the results of offenders' earlier screenings and evaluations is reasonable even if the law does not explicitly require Corrections to do so. According to

Mental Health, for fiscal year 2009–10, the State paid $75 for each clinical screening that its contractors completed and an average of $3,300 for each evaluation. By streamlining its process, Corrections could reduce unnecessary referrals and the associated costs.

Table 4
Reasons for Sex Offenders' Return to the Department of Corrections and Rehabilitation After a Referral to the Department of Mental Health
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Number of offenders with first time referrals who the Department of Corrections and Rehabilitation (Corrections) subsequently released	**231**	**1,407**	**5,780**	**2,834**	**2,023**	**1,237**	**13,512**
Sex Offenders (offenders) who later violated parole†	92	987	4,212	1,434	868	318	7,911
Percentage of total offenders	**40%**	**70%**	**73%**	**51%**	**43%**	**26%**	**59%**
Offenders who were later convicted of a new felony†	1	39	89	4	1	0	134
Percentage of total offenders	**0%**	**3%**	**2%**	**0%**	**0%**	**0%**	**1%**
Offenders who were later convicted of a new sexually violent offense‡	0	0	1	0	0	0	1
Percentage of total offenders	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**

Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and from Corrections Offender Based Information System (OBIS) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† Some overlap may exist among these categories because it is possible for an offender to return to Corrections' custody more than once and for a different reason each time.

‡ The offender in this category is also represented in the *New Felony* category.

In addition, Corrections and the Parole Board frequently did not meet the statutory deadline for referring offenders to Mental Health at least six months before the offenders' scheduled release from custody. In 2009 and 2010, the median amount of time for a referral that Corrections and the Parole Board made to Mental Health was less than two months before the scheduled release date of the offender. Because Corrections and its Parole Board referred many offenders with little time remaining before their scheduled release dates, Mental Health may have had to rush its clinical screening process and therefore may have caused it to evaluate more offenders than would have otherwise been necessary.

Corrections Refers Offenders to Mental Health Without First Determining Whether They Are Likely to Be SVPs

As discussed previously, state law defines the criteria that Corrections and its Parole Board must use to screen offenders to determine if they are likely to be SVPs before referring the offenders to Mental Health. Specifically, state law mandates that Corrections must consider whether an offender committed a sexually violent predatory offense, and the law defines *predatory* acts as those directed toward a stranger, a person of casual acquaintance, or a person with whom an offender developed a relationship for the primary purpose of victimizing that individual. The law also specifies that Corrections and the Parole Board must use a structured screening instrument developed and updated by Mental Health in consultation with Corrections to determine if an offender is likely to be an SVP before referring him or her. Further, state law requires that when Corrections determines through the screening that the person is likely to be an SVP, it must refer the offender to Mental Health for further evaluation.

However, during the time covered by our audit, Corrections and its Parole Board referred all offenders convicted of sexually violent offenses to Mental Health without assessing whether those offenses or any others committed by the offender were *predatory* in nature or whether the offenders were likely to be SVPs based on other information that Corrections could consider. Instead, it left these determinations solely to Mental Health. Moreover, although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law. According to the chief of the classification services unit (classification unit chief) for Corrections' Division of Adult Institutions and the former program operations chief deputy for the Parole Board (parole board deputy),[8] Corrections and the Parole Board did not determine if a qualifying offense or any other crime was predatory when they made a referral. Our legal counsel advised us that according to the plain language of Section 6601(b) of the California Welfare and Institutions Code, Corrections and the Parole Board must determine whether the person committed a predatory offense and whether the person is likely to be an SVP before his or her referral to Mental Health.

Although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law.

Because Corrections did not consider whether offenders' crimes were predatory and whether the offenders were likely to be SVPs, it referred many more offenders to Mental Health than the law intended. This high number of referrals unnecessarily

[8] Subsequent to our interview, this official moved to Corrections' Division of Adult Institutions.

increased Mental Health's workload at a cost to the State. We found several referrals in our sample involving offenders who did not commit predatory offenses. For example, we reviewed cases in which Corrections referred an offender for a sexual crime against his own child, and another for a sexual crime committed against the offender's own grandchild. Although these crimes were serious, they did not meet the law's definition of *predatory* because the victims were not strangers or mere acquaintances.

Mental Health and Corrections' current processes also miss an opportunity to make the referral process more efficient by eliminating duplicate efforts. When considering whether an offender requires an evaluation, Mental Health's clinical screeners use a risk assessment tool—California's State Authorized Risk Assessment Tool for Sex Offenders (STATIC-99R)—as part of determining the individual's risk of reoffending. Corrections uses this same tool in preparation for an adult male offender's release from prison. According to the parole board deputy, Corrections' Division of Adult Parole Operations completes a STATIC-99R assessment approximately eight months before the offender's scheduled parole. Although state law does not specifically require Corrections to consider the STATIC-99R scores as part of its screening when making referrals to Mental Health, doing so would eliminate duplicate efforts and reduce Mental Health's workload because Corrections would screen out, or not refer, those offenders it determines have a low risk of reoffending. This type of screening would reduce costs at Mental Health because fewer clinical screenings would be necessary.

Although Corrections is not required to consider risk assessment scores to determine an offender's likelihood of reoffending when making referrals, doing so would eliminate duplicate efforts and reduce Mental Health's workload.

When we discussed the possibility of Corrections using the STATIC-99R as part of its screening of offenders before it refers them to Mental Health, the parole board deputy stated that he was unaware that Corrections ever considered this approach. However, the California High Risk Sex Offender and Sexually Violent Predator Task Force—a gubernatorial advisory body whose membership included representatives from Corrections, Mental Health, and local law enforcement, among others—recommended in a December 2006 report that Corrections incorporate STATIC-99R into its process. According to the classification unit chief, Corrections is researching the status of its efforts regarding the task force's recommendation.

Many of Corrections' Referrals Involve Offenders Whom Mental Health Has Already Determined Do Not Qualify as SVPs

One of the most useful actions Corrections could take to increase its efficiency when screening offenders for possible referral to Mental Health is to consider the outcome of previous referrals.

Corrections' screening process does not consider whether Mental Health has already determined that an offender does not meet the criteria to be an SVP. As a result, these re-referrals significantly affect Mental Health's caseload. As Table 5 shows, 45 percent of Corrections' referrals to Mental Health since 2005 were for offenders whom it had previously referred and whom Mental Health had concluded did not meet SVP criteria. Many of these cases had progressed only as far as the clinical screenings before Mental Health determined that the offenders did not meet SVP criteria. Table 5 also shows that for 18 percent, or 5,772, of these re-referral cases, Mental Health had previously performed evaluations and concluded that the offenders did not qualify as SVPs. For these 5,772 re-referral cases, Mental Health's previous evaluations occurred within one year for 39 percent, or 2,277, of the cases. Another 30 percent took place within two years.

Table 5
Number of Referrals to the Department of Mental Health for Sex Offenders Who Previously Did Not Meet Sexually Violent Predator Criteria
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Total referrals	**512**	**1,850**	**8,871**	**7,338**	**6,765**	**6,126**	**31,462**
Number of referrals of sex offenders (offenders) whom the Department of Mental Health (Mental Health) had previously found did not qualify as sexually violent predators (SVPs) without evaluations	31	53	1,254	2,306	2,511	2,382	8,537
Percentage of total referrals	**6%**	**3%**	**14%**	**31%**	**37%**	**39%**	**27%**
Number of referrals of offenders who previously received evaluations and did not qualify as SVPs	164	167	721	1,448	1,640	1,632	5,772
Percentage of total referrals	**32%**	**9%**	**8%**	**20%**	**24%**	**27%**	**18%**
Total number of referrals of offenders who previously did not meet SVP criteria	195	220	1,975	3,754	4,151	4,014	14,309
Percentage of total referrals	**38%**	**12%**	**22%**	**51%**	**61%**	**66%**	**45%**

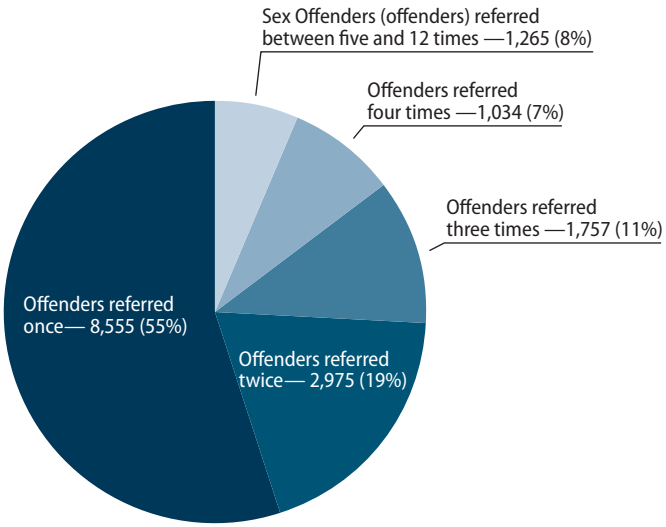
Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent numbers for a partial year—January 2010 through September 2010.

To illustrate the magnitude of this re-referral problem, we noted that Corrections' approximately 31,500 referrals to Mental Health for the period under review represented nearly 15,600 offenders. Of these individuals, Corrections referred almost half, or 7,031 offenders, to Mental Health on at least two occasions. In fact, Figure 3 on the following page shows that Corrections referred 8 percent of offenders between five and 12 times between 2005 and 2010.

Figure 3
Number of Times the Department of Corrections and Rehabilitation Referred Sex Offenders to the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Notes: The data for 2010 represent figures for a partial year—January 2010 through September 2010. As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

Although the law does not specifically require Corrections to consider the outcome of offenders' previous referrals in its screening process, we believe it is reasonable in these cases for Corrections to consider whether the nature of a parole violation or a new crime might modify an evaluator's opinion. This consideration would be in line with the law's direction that Corrections refer only those offenders likely to be SVPs based on their social, institutional, and criminal histories. Many previously referred offenders are, in fact, unlikely to be SVPs given Mental Health's past assessments that they did not meet SVP criteria. By considering whether previously referred offenders warrant new referrals, Corrections could eliminate duplicate efforts and reduce unnecessary workload and costs.

Among all referrals made during the period we reviewed, 63 percent involved offenders in Corrections' custody due to parole violations. Although not all parole violators could be screened out of re-referral through a process that considers the nature of the parole violations, many could be. When we discussed with Mental Health whether it had asked Corrections to cease making re-referrals in those instances in which parole violations were not new sex-related offenses, Mental Health provided us

with a copy of a September 2007 Corrections' memorandum to its staff stating that Mental Health and Corrections had agreed to streamline the referral procedures for parole violators. The memorandum instructed Corrections' staff not to refer offenders if Mental Health had previously determined that the offenders were not SVPs and if the offenders were currently in custody for specified parole violations that Mental Health's psychologists had determined from a clinical standpoint would not change the offenders' risk of committing new sexual offenses. However, five months later, another Corrections' memorandum rescinded these revised procedures. Corrections' classification unit chief told us that although she was not with the program at the time, she believed that the former Governor's Office had instructed the departments to discontinue using the streamlined process because it did not comply with the law. We asked Corrections for more details about this legal determination, but Corrections could not provide any additional information. According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

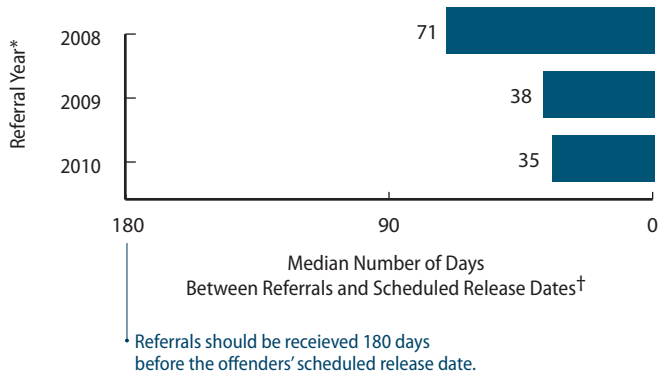
According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

Corrections' Failure to Refer Offenders Within Statutory Time Frames May Force Mental Health to Rush Its Screening Process

State law requires that Corrections refer offenders to Mental Health at least six months before their scheduled release dates. However, according to the median amount of time for referrals displayed in Figure 4 on the following page, Corrections did not meet this deadline for a significant portion of referrals during the three years for which Corrections and Mental Health were able to provide data to us.[9] Corrections' procedure manual states that it will screen offenders nine months before their scheduled release dates unless it receives them with less than nine months to their release, in which case the department has alternate procedures. This policy, if followed, should ensure that Corrections forwards cases to Mental Health at least six months before the offenders' release, as required by law. However, the parole board deputy noted that issues such as workload and missing documents can prevent Corrections from making these referrals in a timely manner.

[9] State law does not apply this requirement for offenders whose release dates are changed by judicial or administrative actions or for offenders in Corrections' custody for less than nine months. Although we could not exclude from our data analysis those offenders whose release dates were altered by judicial or administrative actions, our review of case files at Mental Health revealed no obvious instances in which such alterations occurred. This observation suggests that judicial or administrative actions were not the primary cause of Corrections' lack of timeliness. We excluded from our analysis those offenders who, as of the date of their referral, had been in Corrections' custody for less than nine months.

Figure 4
Median Number of Days Between the Department of Corrections and Rehabilitation's Referrals to the Department of Mental Health and Sex Offenders' Scheduled Release Dates at Time of Referral



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and the Offender Based Information System (OBIS) from the Department of Corrections and Rehabilitation (Corrections) for 2008 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* Data analysis September 16, 2008, through September 2010.

† Analysis does not include sex offenders who were in Corrections' custody for less than nine months as of the date of their referral.

Late referrals shorten the amount of time available for Mental Health to evaluate offenders properly. In fact, in one case we reviewed, Mental Health received the referral one day before the offender's scheduled release. In another case, Mental Health received a referral for an offender 11 days before his scheduled release. Although Mental Health can request that the Parole Board place a temporary hold on an offender's release to extend the amount of time that Mental Health has to evaluate him or her, state law requires that the Parole Board have good cause for extending the offender's stay in custody. Mental Health's program manager stated that in practice, Mental Health requests a hold from the Parole Board when it determines that it cannot complete an evaluation by the offender's scheduled release date. The program manager also stated that sometimes the time remaining before an offender's release is so short that the department must rush an offender through a clinical screening in order to ensure that it can request a hold.

Although Mental Health Did Not Conduct Full Evaluations of All Referred Offenders, It Generally Ensured That Offenders Were Properly Screened and Evaluated

Our review indicated that Mental Health's process for determining whether it should perform full evaluations of referred offenders has been generally effective and appropriate. As discussed earlier,

the number of offenders whom Corrections referred to Mental Health increased significantly after the passage of Jessica's Law. To manage this workload, Mental Health used the administrative reviews to ensure that it has all of the information necessary to perform clinical screenings, which it uses to determine whether offenders warrant full evaluations. Between February 2008 and June 2010, Mental Health also used the administrative reviews as opportunities to identify offenders who did not warrant clinical screenings because Mental Health had evaluated these offenders previously and had determined that they did not meet SVP criteria. Mental Health rescinded this policy, and, as previously discussed, Corrections also rescinded its similar policy for screening out certain offenders from re-referral. However, we believe that Mental Health should work with Corrections to reduce unnecessary referrals.

We believe that Mental Health should work with Corrections to reduce unnecessary referrals.

Mental Health has for the most part conducted evaluations of offenders effectively; however, for a time, it did not always assign the required number of evaluators to cases. Specifically, Mental Health's data indicates that it did not arrange for two evaluators to conduct the evaluations for 161 offenders, as state law directs. In addition, for at least a year prior to August 2008, Mental Health did not assign a fourth evaluator to each case in which the first two evaluators disagreed as to whether the offender met SVP criteria and in which the third evaluator also did not believe that the offender met SVP criteria. In cases requiring a third and fourth evaluator to determine whether an offender meets SVP criteria, state law may need clarification. Nonetheless, we believe that the selective use of a fourth evaluator in those instances when the third evaluator concludes the offender meets SVP criteria is a cost-effective approach. Because the third and fourth evaluators must both agree that the offender meets SVP criteria, the conclusion of the fourth evaluation is relevant only if the third evaluator concludes that the offender meets SVP criteria.

Mental Health's Administrative Review and Clinical Screening Processes Appear Prudent

As the Introduction discusses, state law specifies that Mental Health must conduct a full evaluation of every offender Corrections refers to it. However, in practice, Mental Health conducts an administrative review and clinical screening before performing a full evaluation. Although state law does not specify that Mental Health should perform these preliminary processes, doing so appears to save the State money without unduly affecting public safety because these procedures allow Mental Health to save the cost of evaluations for offenders who do not meet SVP criteria.

According to Mental Health's program manager, when Corrections began referring more offenders in response to Jessica's Law, the number of incomplete and invalid referrals also increased. The program manager stated that Mental Health implemented the administrative reviews and clinical screenings as quality improvement measures. Specifically, the administrative review ensures that each referral includes all the necessary documentation, including police records, and that the offender is available for evaluation. During the clinical screening, a clinician reviews the offender's file and determines whether the offender merits an evaluation. This screening is necessary because Corrections neither assesses whether an offender committed a predatory offense or is likely to re-offend, nor evaluates the nature of an offender's parole violation before it makes a referral.

Additionally, Mental Health implemented a streamlined process for addressing re-referred offenders. As directed in Mental Health's policy that was in effect between February 2008 and June 2010, Mental Health's case managers could decline to schedule clinical screenings for offenders whom Mental Health had previously screened or evaluated and determined did not meet SVP criteria if the case managers determined the offenders had not committed new crimes, sex-related parole violations, or any other offenses that might contribute to a change in their mental health diagnoses. The policy provided screening guidelines for staff to consider and examples of factors that demonstrated when a case did not warrant a clinical screening and for which Mental Health—after its administrative review—could notify Corrections that the offender did not meet SVP criteria.

Our analysis of Mental Health's data showed that between 2005 and 2010, Mental Health decided that half of the roughly 31,500 referrals did not warrant clinical screenings. Our review of six specific cases suggests that Mental Health followed its own policy and notified Corrections that the offenders did not meet SVP criteria when case managers determined that the nature of the parole violations would not change the outcomes of previous screenings or the evaluations of re-referred offenders. For example, in three of these cases, Mental Health's case managers noted that parole violations were not related to sexual behavior and would not change the most recent evaluations' results. These evaluations had concluded that each of these offenders lacked an important element of SVP criteria: a diagnosable mental disorder or the likelihood that the offender would engage in sexually violent criminal behavior. When we asked Mental Health why it had developed the policy allowing case managers to decide that some re-referred cases did not warrant clinical screenings, the program manager explained that clinical determinations are highly unlikely to alter if there are no new issues that are substantive or related to sexual offenses.

Therefore, to streamline the already overburdened process, Mental Health believed it was within the law and in the public interest to conduct only administrative reviews for certain offenders. However, according to the program manager, Mental Health implemented a more in-depth review due to several high-profile sexual assault cases.

As explained previously, for a brief time Corrections and Mental Health had an agreement that they designed to eliminate unnecessary re-referrals. However, apparently in response to concerns from the former Governor's Office, Corrections stopped using this agreement. Although Mental Health could reinstitute its administrative review policy, we believe the better course of action is for Mental Health to work with Corrections to revise its current screening and referral process so that Corrections considers STATIC-99R scores, previous clinical screening and evaluation results, and the nature of any parole violations before referring cases to Mental Health. Moreover, our legal counsel believes that the law allows such a process. In light of the volume of referrals to Mental Health, such revisions to the screening and referral process would be a reasonable, responsible way to reduce the costs and duplicative efforts associated with these referrals.

Although Mental Health Did Not Always Assign the Required Number of Evaluators, It Properly Recommended Offenders to Designated Counsels When Warranted

Our review of 30 cases in which Mental Health completed evaluations of offenders found that Mental Health generally followed its processes for conducting evaluations and asked the designated counsels to request commitments when warranted. Mental Health based its requests to the designated counsels on its evaluators' thorough assessments, which included face-to-face interviews with offenders unless they declined to participate. The evaluators also conducted extensive record reviews and used evaluation procedures that applied industry standard diagnostic criteria to decide whether mental disorders were present and employed risk assessment tools to determine the offenders' risk of re-offending.

Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders.

Although Mental Health properly recommended that designated counsels request commitments when warranted, Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders. As the Introduction explains, state law requires Mental Health to designate two evaluators to evaluate offenders likely to be SVPs. When two evaluators disagree about whether an offender meets the criteria for the program, state law requires Mental Health to arrange for two additional evaluators

We found that in 161 instances Mental Health arranged for only one initial evaluator—rather than the required two—to assess each offender before notifying Corrections that the offender did not meet SVP criteria.

to assess the offender. However, when we examined some case files and analyzed Mental Health's data for January 2005 through September 2010, we found that in 161 instances Mental Health arranged for only one initial evaluator to assess each offender before notifying Corrections that the offender did not meet SVP criteria. The data are also supported by our case file reviews, in which we found one instance where Mental Health notified Corrections that an offender did not meet SVP criteria based on a single evaluator's assessment, which found that the offender did not have a diagnosable mental disorder.

When we asked Mental Health about these 161 referrals, the program manager indicated that for a short time after the passage of Jessica's Law, Mental Health implemented a process stipulating that if the first evaluator determined that the offender did not have a diagnosable mental disorder, Mental Health did not refer the offender to a second evaluator. The program manager stated that the passage of Jessica's Law had not allowed Mental Health sufficient time to put in place the infrastructure and resources needed to respond to the magnitude of referrals it received from Corrections during the period that we reviewed. Mental Health acknowledged that this process, which it communicated to staff verbally, began in October 2006 and ended in June 2007, after it had obtained and trained a sufficient number of evaluators. The program manager provided a list of offenders and indicated that Corrections later re-referred 98 of the 161 offenders that had previously received only one evaluation. She indicated that Mental Health determined either during subsequent clinical screenings or during evaluations that these 98 offenders did not meet SVP criteria and that the remaining offenders have not been referred to Mental Health again.

We also found that Mental Health did not always assign two additional evaluators to resolve differences of opinion between the first two evaluators about referred offenders; however, we believe that this practice had no impact on public safety. Specifically, our analysis of Mental Health's data shows that in 254 closed referrals, Mental Health arranged for a third evaluator only and not for a fourth. According to e-mail correspondence provided by the program manager, for at least a year before August 2008, Mental Health's practice was to assign a fourth evaluator to a case only if a third evaluator concluded that the offender met SVP criteria. According to the program manager, the former chief of the program rescinded this practice in August 2008 after verbal consultation with the department's assistant chief counsel. E-mail correspondence from the former chief of the program to staff indicates that this practice did not comply with state law.

From both a legal and budgetary perspective, we believe that the practice of obtaining a fourth evaluation only if a third evaluator concludes that the offender is an SVP is a practical way to manage the program. If the third evaluator believes the offender is not an SVP, state law generally would not allow Mental Health to recommend the offender for commitment even if the fourth evaluator concludes that the offender meets the necessary criteria. According to Mental Health's own analysis, the average cost of an evaluation completed by a contractor for fiscal year 2009–10 was $3,300; therefore, the department's avoiding unnecessary fourth evaluations could result in cost savings. Our legal counsel advised us that the law is open to interpretation on this issue. Thus, we suggest that Mental Health reinstitute this practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

We suggest that Mental Health reinstitute the practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

Mental Health Has Used Contractors to Perform Its Evaluations Due to Limited Success in Increasing Its Staff

Because it has made limited progress in hiring and training more staff, Mental Health has used contractors to complete the evaluations of sex offenders whom it has considered for the program. According to the program manager, the evaluation of sex offenders is a highly specialized field, and Mental Health believes it has not had staff with the skills and experience necessary to perform the evaluations. Mental Health reported to us that as a result, for fiscal years 2005–06 through 2009–10, it paid nearly $49 million to contractors who performed work related to its evaluations of offenders. Although current state law expressly authorizes Mental Health to use contractors for all types of evaluations, this permission will expire on January 1, 2012.[10] Because Mental Health has had difficulty in hiring staff, acquiring a sufficient work force to conduct its evaluations is likely to pose a significant challenge when the law expires.

In April 2007 an employee union requested that the State Personnel Board review Mental Health's evaluator contracts for compliance with the California Government Code, Section 19130(b), which allows contracting only when those contracts meet certain conditions, such as that state employees cannot perform the work. The State Personnel Board ruled against Mental Health, finding that Mental Health had not adequately demonstrated that state employees could not perform the tasks that it had assigned

[10] Although express permission for contractors to perform all types of evaluations expires on January 1, 2012, state law will continue to require that Mental Health use contractors to perform the difference-of-opinion evaluations. As the Introduction details, state law specifically mandates that these evaluators cannot be employees of the State.

to contractors. Because of the ruling, the State Personnel Board disapproved Mental Health's contracts effective 90 days after its March 2008 decision.[11] In September 2008, to provide Mental Health with the capacity to perform the required evaluations, the Legislature amended state law to give the department express permission to use contractors for all types of evaluations until January 1, 2011. The Legislature later extended this authorization until January 1, 2012.[12]

According to the program manager, Mental Health believes that no current state employee position requires minimum qualifications sufficient to perform the function of the SVP evaluator. As evidenced by Mental Health's requirements for its contract evaluators, the department believes evaluators need specific experience in diagnosing the sexually violent population and at least eight hours of expert witness testimony related to SVP cases. Currently, as the program manager explained, Mental Health does not consider state-employed consulting psychologists qualified to perform evaluations, although it has provided two employees with additional training, mentoring, and experience to prepare them to perform evaluations. These two employees have completed three evaluations but have yet to provide expert witness testimony. The program manager also stated that Mental Health has had difficulty hiring consulting psychologists with qualifications similar to those of the contracted evaluators because the compensation for the consulting psychologist positions is not competitive with what is available to psychologists in private practice for this specialized area of forensic mental health clinical work. Mental Health completed a salary analysis in March 2010 that found that the average hourly pay for the contractors to perform evaluations and clinical screenings is approximately $124 per hour, compared to the $72 per hour—including benefits—that state-employed consulting psychologists earn.

Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff.

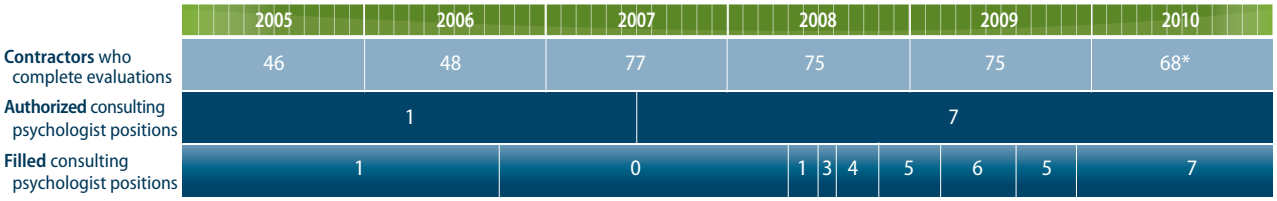
Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff. As Figure 5 indicates, from January 2005 through September 2010, Mental Health used between 46 and 77 contractors each year to complete its workload of evaluations and clinical screenings, while some or all of its seven positions for state-employed consulting psychologists were at times vacant. Mental Health reported to us that for fiscal years 2005–06 through 2009–10, it spent nearly $73 million on the contractors. This amount is equivalent

[11] The State Personnel Board's decision said that it is permissible for Mental Health to use contractors to perform difference-of-opinion evaluations.

[12] If the director of Mental Health notifies the Legislature and the Department of Finance that it has hired a sufficient number of state employees before this date, the express permission will end earlier than January 1, 2012.

to an average of roughly $188,000 per year per contractor. By comparison, for fiscal year 2009–10, each consulting psychologist earned $110,000 (excluding benefits). The $73 million included payments for activities that the contractors performed separate from the initial screening and evaluation process, such as providing expert witness testimony in court and updating evaluations for offenders awaiting trial or already committed as SVPs. The amount also included approximately $49 million related to the evaluation of offenders whom Corrections referred to Mental Health. The reported estimate of costs for clinical screenings performed by contractors during the same period was almost $169,000.[13]

Figure 5
Number of Contractors and State-Employed Consulting Psychologists Used by the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database); summary of the number of authorized positions for the consulting psychologist classification and the number of employees filling those positions by year provided by the program manager of the Sex Offender Commitment Program.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* The data for 2010 contractors represents a partial year—January 2010 through September 2010.

To address the difficulty in hiring qualified evaluators as state employees, Mental Health is working to establish a new evaluator classification. The proposed position is a permanent-intermittent position—a state classification in which the employee works periodically or for a fluctuating portion of a full-time work schedule and is paid by the hour. Mental Health plans for these employees to work as its caseload requires. This proposed new classification offers a more competitive compensation than does the standard consulting psychologist position, so Mental Health believes that it will now attract more individuals as potential employees. The qualifications for the new classification are similar to the requirements placed on Mental Health's current contractors who perform evaluations. Mental Health anticipates that the State

[13] Contractors were paid $75 per clinical screening. This cost does not cover the screenings performed by the state-employed consulting psychologists.

Personnel Board will consider its request for the new position classification in August 2011. If the State Personnel Board approves the classification, Mental Health plans initially to seek authority for 10 positions and then increase its positions by 10 in each subsequent fiscal year until eventually it can rely completely on employees to perform the evaluations. The only exceptions to Mental Health's reliance on state-employed evaluators will occur when it must use contractors to provide difference-of-opinion evaluations, as required by law. If it has not hired sufficient staff by 2012, the program manager stated that Mental Health plans to propose a legislative amendment to extend its authorization to use contractors.

Mental Health Has Not Reported to the Legislature About Its Efforts to Hire State Employees as Evaluators or About the Impact of Jessica's Law on the Program

Mental Health has not submitted required reports about its efforts to hire qualified state employees to conduct evaluations of potential SVPs and about the impact of Jessica's Law on the program. State law requires Mental Health to report semiannually to the Legislature on its progress in hiring qualified state employees to complete evaluations. Although the first of these reports was due by July 10, 2009, Mental Health has yet to submit any reports. In addition, state law required Mental Health to provide a report to the Legislature by January 2, 2010, on the effect of Jessica's Law on the program's costs and on the number of offenders evaluated and committed for treatment. However, Mental Health also failed to submit this report. In May 2011 Mental Health's external audit coordinator stated that the reports were under development or review. Mental Health did not explain why the reports were late or specify a time frame for the reports' completion.

The Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders and how profoundly Jessica's Law has affected Mental Health's workload.

Because Mental Health has not submitted the required reports, the Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders. The Legislature and other interested parties may also have been unaware of how profoundly Jessica's Law has affected Mental Health's workload. As a result, the Legislature may not have had the information necessary to provide appropriate oversight and to make informed decisions.

Recommendations

To enable it to track trends and streamline processes, Mental Health should expand the use of its database to capture more specific information about the offenders whom Corrections refers to it and the outcomes of the screenings and evaluations that it conducts.

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.
- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.
- Using STATIC-99R to assess the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier than nine months before offenders' scheduled release dates in order to meet its six-month statutory deadline.

To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets SVP criteria.

To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date:	July 12, 2011
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Legal Counsel:	Scott A. Baxter, JD
IT Audit Support:	Michelle J. Baur, CISA, Audit Principal Richard W. Fry, MPA
Consultants:	Loretta Hall, CISA, CISSP Celina Knippling, CPA

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

(Agency response provided as text only.)

California Department of Mental Health
1600 9th Street
Sacramento, CA 95814

June 21, 2011

Elaine M. Howle, CPA
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Mental Health (DMH) has prepared its response to the draft report entitled "Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work". The DMH appreciates the work performed by the Bureau of State Audits and the opportunity to respond to the draft report.

Please contact Vallery Walker, Internal Audits, at (916) 651-3880 if you have any questions.

Sincerely,

(Signed by: Cliff Allenby)

CLIFF ALLENBY
Acting Director

Enclosure

Response to the Bureau of State Audits
Draft Report Entitled

"Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work"

Recommendation: To enable it to track trends and streamline processes, the Department of Mental Health (Mental Health) should expand the use of its database to capture more specific information about the offenders the Department of Corrections and Rehabilitation (Corrections) refers to it and the outcomes of the screenings and evaluations it conducts.

Response: Mental Health has identified database enhancements that will enable the Sex Offender Commitment Program (SOCP) to track more specific information related to victims, offenders, offenses, screening results, evaluations results, referral decisions and actions taken by the District Attorneys and the courts. These changes will enable Mental Health to track trends and streamline processes.

Recommendation: To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determine whether the offender committed a predatory offense.
- Review the result of any previous screenings and evaluations Mental Health completed and consider whether the most recent parole violation or offense might alter the previous decision.
- Use the State Authorized Risk Assessment Tool for Sex Offenders to assess the risk that an offender will reoffend.

Response: Mental Health and Corrections are already working together to further streamline the referral process to eliminate duplicative effort and increase efficiency.

Recommendation: To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval of a new position classification for SVP evaluators. If the State Personnel Board (SPB) approves the classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

Response: Mental Health has submitted its SVP Evaluator classification proposal to the Department of Personnel Administration. It is anticipated that the SPB will hear the proposal in the month of August 2011. SOCP will immediately recruit SVP Evaluators once this classification is approved by SPB and position authority has been granted. SOCP Consulting Psychologists currently attend trainings on legal and clinical practices related to full evaluations and trends in the forensics field. Efforts to train consulting psychologists to conduct evaluations will continue.

In addition, Mental Health plans to propose legislative amendments to extend its authorization to use contractors for all types of evaluations prior to the expiration of its current authorization of January 1, 2012.

Recommendation: To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that, when resolving a difference of opinion between the first set of evaluators, Mental Health must only seek the opinion of a fourth evaluator when a third evaluator concludes that the offender meets the SVP criteria.

Response: Mental Health is evaluating options to reduce costs for unnecessary evaluations.

Recommendation: To ensure the Legislature can provide effective oversight, Mental Health should complete and submit reports to the Legislature on its efforts to hire state employees and on the impact of Jessica's Law on the program as soon a possible.

Response: The Administration is in the process of finalizing these reports.

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(Agency response provided as text only.)

California Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001

June 21, 2011

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Corrections and Rehabilitation (CDCR) is submitting this letter in response to the Bureau of State Audits' report (BSA) entitled ***Departments of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work.***

The Legislature created the Sex Offender Commitment Program to target sex offenders who present the highest risk to public safety due to their diagnosed mental disorders which predisposes them to engage in sexually violent criminal behavior. As such, CDCR is committed to adhering to the statutory law governing this program and will always err on the side of caution in regards to public safety when making sex offender referrals to the Department of Mental Health (DMH). CDCR appreciates the thoughtful review conducted by BSA and the concerns for duplicate work and potential savings for the state of California. CDCR notes the current screening process developed collaboratively by both departments provides the ability for the State to meet the intent of the Sexually Violent Predator statute in screening and identifying offenders without requiring duplicative mental health assessments by both departments, which would have a negative fiscal impact on the State. We agree that improvements can be made in streamlining the process and have already implemented steps to improve the timeliness of our referrals to DMH. We look forward to carefully reviewing the recommendations in this report and will continue our work with DMH to increase efficiency.

We would like to thank BSA for their work on this report and will address the specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

(Signed by: Scott Kernan)

SCOTT KERNAN
Undersecretary, Operations (A)

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

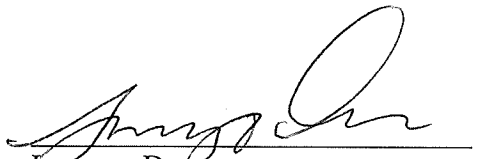
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/5/19

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

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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EXHIBIT H

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Re: **Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CMS-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

On behalf of the County of Orange and its offices, departments and agencies (the "County"), we hereby present the following comments in response to the Commission's February 8, 2019 Request for Comment and Legal Argument and in opposition to the Department of Finance's ("DOF") request for redetermination.

Background

In 1995, the legislature enacted the Sexually Violent Predators Act (the "SVPA"), Welfare and Institutions Code sections 6600 through 6608, which established comprehensive civil commitment procedures for the detention and treatment of sexually violent offenders whose diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. In 1998, the Commission determined that the SVPA created reimbursable state mandates as to eight duties required by local governments under the SVPA. Years later, in 2013, the Department of Finance for the State of California ("DOF") filed a request for redetermination of this mandate pursuant to Government Code section 17570, asserting that Proposition 83 (also known as "Jessica's Law"), which was adopted by the voters on November 7,

2006, constituted a subsequent change in the law, eliminating the state's liability under the test claim statutes. The Commission partially approved the DOF's request in late 2013, declaring that six of the eight duties were no longer state mandates and were, instead, mandated by Proposition 83.

Several counties filed a petition for writ of mandate seeking to overturn this decision. Ultimately, on November 19, 2018, the Supreme Court agreed with the counties and determined that the Commission erred in treating Proposition 83 as a basis for terminating the state's obligation to reimburse the counties simply because certain provisions of the SVPA had been restated without substantive change in Proposition 83. (*County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.) While the Court noted that Proposition 83 expanded the "Sexually Violent Predator" ("SVP") definition, it stressed that the "the current record is insufficient to establish, how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments." (*Id.* at 217.) It continued "under the circumstances, we find it prudent to remand the matter to the Commission to enable it to address these arguments in the first instance." (*Ibid.*)

On February 8, 2019, the Commission sought briefing on "whether [Proposition 83's] expanded SVP definition transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties." Informed by the Court's observation that "the current record is insufficient" as to the actual effects of the definition expansion, the Commission specifically requested information regarding "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referral so to local governments." It also noted that Commissions ultimate filings must be supported by "substantial evidence."

On March 26, 2019, the DOF submitted its comments, which cited no evidence regarding whether, and to what extent, the number of referrals to local governments was affected by Proposition 83's expanded SVP definition. (*See* DOF's March 26, 2019 Letter ("DOF letter").)

The DOF Has Not Met Its Burden

In making a request for redetermination, it was the DOF's burden to demonstrate a "subsequent change in law" material to the prior test claim decision. (Cal. Code Regs., tit. 2, § 1190.5, subd. (a)(1); Gov't Code § 17570(b).) Government Code section 17570, subdivision (a)(2) defines a "subsequent change in law" as a "change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556." Given that the Supreme Court has already opined that the current record is insufficient to establish that such a change resulted from the simple expansion of the SVP definition, the DOF needed to create a record and provide evidence of the practical effects and costs flowing from this change. By declining to do so, it failed to meet its burden.

Instead, in its March 22, 2019 letter, the DOF relied entirely on to Proposition 83's statutory changes, which were part of the record and wholly known to the Supreme Court at the time of its decision. It then asserted that the new SVP definition expanded the "category of people" who could be subject to the SVP protocols and, therefore, the costs relating to previously state-mandated duties now "flow from" this definition. (DOF letter at p. 2.) This assertion is meaningless in the absence of any data demonstrating that the change in definition had anything other than a *de minimus* effect on referrals to local governments. Information about referrals was specifically requested by the Commission and readily available to the DOF through the Department of State Hospitals, a state agency. However, the DOF declined to provide it.[1]

Proposition 83's Expanded Definition Of SVP Did Nothing To Transform The Test Claim Statutes Into A Voter-Imposed Mandate

In enacting the SVPA in 1996, the legislature created a robust statutory scheme to address SVPs and imposed significant burdens and costs on local governments. The minor amendment of the statutory scheme by a ballot measure did not impact local government duties or the state's subvention duties. (*See County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 213 ["[N]othing in Proposition 83 focused on duties local governments were already performing under the SVPA. No provision amended those duties in any substantive way."].) Had Proposition 83 failed, the fundamental burdens of the SVPA protocols would still exist as they now exists; Proposition 83's failure would not have changed this. Instead, Proposition 83 merely asked voters whether they wanted to amend the act in a limited manner and recited a large portion of the remaining statutory scheme to provide the voters with context to guide their decision. (For further discussion on this and other points relevant to the Commission's analysis, please see the County of Orange's August 20, 2013 Comments to the Draft Staff Analysis and Proposed Statement of Decision for the Second Hearing as well as the testimony of former Orange County Supervisor Todd Spitzer at the Commission's September 27, 2013 Public Meeting.)

In particular, changes to the SVP definition resulting from Proposition 83 did not require local entities to perform new services or provide a higher level of service. Under the original SVPA, and under Proposition 83, an individual still has to committed a sexually violent offence and must have a "diagnosed mental disorder that makes the person a danger to the health and

[1] Since the DOF has not set forth a factual basis for seeking redetermination as it relates to the expanded SVP definition, the County hereby reserves its right to submit further data should the Commission find that the DOF has met its initial burden. In particular, this office has filed a Public Records Act Request for data from the Department of State Hospitals regarding the number of referrals to for civil commitment proceedings under Welfare and Institutions Code section 6601 from 1996 to present, in Orange County and statewide. We request the opportunity to supplement our comments to the Commission once this data is received.

safety of others in that it is likely that he or she will engage in sexually violent criminal behavior" in order to qualify as an SVP. As the Supreme Court acknowledged, Proposition 83 made only two changes to the definition.[2] "First, [Proposition 83] reduced the required number of victims, so that an offender need only have been 'convicted of a sexually violent offense against one or more victims,' instead of two or more victims . . . . Second, [it] eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction. (*County of San Diego v. Commission on State Mandates,* 6 Cal.5th at 216.) (Citations omitted.)

While the Supreme Court acknowledge the *possibility* that the definitional change might, as a practical matter, modify local duties or significantly increase the burdens of those duties, the DOF has presented no evidence that this actually happened. To the contrary, as further addressed below, the evidence suggests that the burdens of the SVP protocols have remained approximately the same, or declined, following the enactment of Proposition 83.

Proposition 83's Expanded Definition Of SVP Did Not Result In An Increase In Referrals To Local Governments

In its July 2011 report, the California State Auditor explained, "Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained." (California State Auditor Sex Offender Commitment Program July 2011 Report 2010-116, http://www.bsa.ca.gov/pdfs/reports/2010-116.pdf at p. 15. A true and correct copy of this report is attached hereto as Exhibit A.) It further noted "Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law." (*Ibid.*) In an effort to explain the lack of change, the State Auditor referenced the requirement that SVPs have a diagnosed mental disorder that makes them likely to reoffend. It opined, "the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism." (*Ibid.*)

---

[2] The DOF asserts that "*the voters* expanded the set of crimes that qualify as a 'sexually violent offence' citing various penal code sections (Penal Code sections 207 (kidnapping), section 209 (kidnapping for ransom, reward, or extortion, or to commit robbery or rape), or section 220 of the Penal Code (assault to commit mayhem, rape, sodomy, or oral copulation), committed with the intent to commit another enumerated 'sexually violent offense.'" (DOF letter at p. 1.) (Emphasis added).) However, the inclusion of this language in Welf. & Inst. Code, § 6600 was the result of the *legislature's* enactment of SB 1128, effective September 20, 2006, before the adoption of Proposition 83. (Leg. Counsel's Dig., Sen. Bill No. 1128 (2005-2006 Reg. Sess.).)

Even though the expanded definition of SVP technically allows first time, single victim, offenders to be committed, the evidence suggests that those cases rarely exist and are rarely pursued. As a practical matter, it appears that the requirement that a SVP have a diagnosed mental disorder making him or her a prone to recidivism, generally limits the implementation of the SVP protocols to those who have more than one victim and would have qualified under the previous definition. For this reason, the duties and burdens imposed by the current SVP protocols in addressing the current SVP definition are nearly identical to the previous duties and burdens.

In fact, the preliminary research from the Orange County District Attorney's office demonstrates an overall average decline in referrals and SVP commitment cases in Orange County following Proposition 83's implementation. (*See* Declaration of Peter Finnerty attached hereto as Exhibit B.) The office noted that it filed an average of 4.43 commitment cases per year from 2000 through 2006. That number went down to an average of 3.42 commitment cases per year in the years that followed Proposition 83's implementation from 2007 through 2018.

I declare under penalty of perjury that the foregoing, signed on April 10, 2019, is true and correct to the best of my personal knowledge, information or belief.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By _____
Suzanne E. Shoai, Deputy County Counsel

SES:mll
Attachments:
Exhibit A - California State Auditor Sex Offender Commitment Program July 2011 Report
Exhibit B – Declaration of Peter Finnerty

CALIFORNIA STATE AUDITOR

Sex Offender Commitment Program

Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work

July 2011 Report 2010-116

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July 12, 2011 2010-116

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the state's Sex Offender Commitment Program (program), which targets a narrow subpopulation of sex offenders (offenders)—those who represent the highest risk to public safety because of mental disorders. Our analysis shows that between 2007 and 2010 less than 1 percent of the offenders whom the Department of Mental Health (Mental Health) evaluated as sexually violent predators (SVPs) met the criteria necessary for commitment.

Our report concludes that the Department of Corrections and Rehabilitation (Corrections) and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Legislature designed the Sex Offender Commitment Program (program) to target a narrow subpopulation of sex offenders (offenders): those who represent the highest risk to public safety because of mental disorders. However, between 2007 and 2010, very few offenders whom the Department of Mental Health (Mental Health) evaluated as potential sexually violent predators (SVPs) met the criteria necessary for commitment. As a result, the courts ultimately committed only a small percentage as SVPs even though Mental Health received more than 6,000 referrals in each of these years from the Department of Corrections and Rehabilitation (Corrections). Our analysis suggests that Corrections' and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work.

The current inefficiencies in the program's process for evaluating potential SVPs are in part the result of Corrections' interpretation of state law. The inefficiencies were compounded by recent changes made by Jessica's Law. Specifically, when California voters passed Jessica's Law (Proposition 83) in 2006, they added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one; therefore, many more offenders became potentially eligible for commitment to the program. Corrections, in consultation with its Board of Parole Hearings (Parole Board), referred *all* offenders who had committed sexually violent offenses to Mental Health for evaluation as potential SVPs without first considering other factors, as required by law. Consequently, the number of referrals Corrections made to Mental Health increased dramatically, from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was effective.

However, Corrections' referral of every offender who has committed a sexually violent crime was not the intent of state law, which specifically mandates that Corrections determine when making referrals whether offenders' crimes were predatory and whether the offenders meet other criteria before referring them as potential SVPs. We believe that if Corrections screened offenders more closely before referring them to Mental Health, the number of Corrections' referrals might drop significantly. For example, in our review, we noted several instances in which Corrections referred offenders whose crimes were not predatory under the law's definition. Further, 45 percent of Corrections' referrals since 2005 involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs (SVP criteria). Although state law does

Audit Highlights . . .

Our review of the state's Sex Offender Commitment Program (program) between January 2005 and September 2010 revealed the following:

» *The Department of Corrections and Rehabilitation (Corrections) sent more than 6,000 referrals each year from 2007 through 2010 to the Department of Mental Health (Mental Health) for evaluation as potential sexually violent predators (SVPs).*

» *Many more offenders became potentially eligible for commitment to the program when California voters approved Jessica's Law (Proposition 83)—the law added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one.*

» *Because Corrections referred all offenders who had committed sexually violent offenses to Mental Health for evaluation, this also contributed to the number of referrals increasing from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was in effect.*

- *We noted several instances in which Corrections referred offenders whose crimes were not predatory under the law.*
- *Since 2005, 45 percent of the referrals involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs.*

» *Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates as required and, thus, shortened the time available for Mental Health to perform reviews and schedule evaluations.*

continued on next page . . .

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- *Although Mental Health's evaluation process appears to have been effective, for a time it sometimes assigned one evaluator, rather than the two required.*
- *Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings, however, the state law that expressly allows Mental Health to use contractors expires in 2012.*
- *Mental Health did not submit required reports to the Legislature about its efforts to hire staff to evaluate offenders and about the impact of Jessica's Law on the program.*

not specifically require Corrections to consider the outcomes of previous screenings or evaluations when making referrals, the law directs Corrections to refer only those offenders it deems likely to be SVPs, and we believe that it is logical and legal for Corrections to take into account Mental Health's previous conclusions about specific offenders when reaching such determinations. Additionally, Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates, as required by state law. These late referrals shortened the time available for Mental Health to perform reviews and schedule evaluations.

To handle the high number of offenders referred by Corrections, Mental Health put into place processes that enable it to determine whether offenders are possible SVPs before scheduling full evaluations. We believe that these processes are appropriate given that Corrections refers offenders without first determining whether their crimes were predatory and whether the offenders are likely to be SVPs. Specifically, when Mental Health receives a referral from Corrections, it first conducts an administrative review to ensure that it has all of the information necessary to make a determination. It then conducts a clinical screening—a file review by a psychologist—to rule out any offender who is not likely to meet SVP criteria and thus does not warrant a full evaluation. Between February 2008 and June 2010, Mental Health also used administrative reviews to identify offenders whom it had previously screened or evaluated and whose new offenses or violations were unlikely to change the likelihood that they might be SVPs. Mental Health rescinded this policy in June 2010. We also noted that for a short time, Corrections had a similar policy that it also rescinded. Nonetheless, we believe Mental Health should work with Corrections to reduce unnecessary referrals.

After completing the administrative reviews and clinical screenings, Mental Health conducts full evaluations of potential SVPs, a process that involves face-to-face interviews unless offenders decline to participate. Although we found that in general Mental Health's evaluation process appears to have been effective, we noted that for a time it did not always assign to cases the number of evaluators that state law requires. After the passage of Jessica's Law, Mental Health relied on the opinion of one evaluator rather than two when concluding that 161 offenders did not meet SVP criteria. Mental Health's program manager stated that Mental Health temporarily followed this practice of using just one evaluator because it did not have adequate staff to meet its increased workload. She also indicated that Corrections referred 98 of the offenders again, and Mental Health determined during subsequent screenings and evaluations that they did not meet SVP criteria.

A potential challenge that Mental Health faces in meeting its increased workload involves the mental health care professionals who perform its evaluations. Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings. However, when the state law that expressly permits Mental Health to use contractors expires in 2012, Mental Health will need to justify its continued use of contractors, which the State Personnel Board has ruled against in the past.[1] According to a program manager, Mental Health primarily uses contracted evaluators to perform the evaluations because the staff psychologists are still completing the necessary experience and training. Mental Health stated that it has had difficulty attracting qualified evaluators to state employee positions because the compensation is not competitive for this specialized area of forensic mental health clinical work. To remedy the situation, Mental Health is working to establish a new position that will provide more competitive compensation. If Mental Health has not hired sufficient staff by 2012, the program manager stated that it plans to propose a legislative amendment to extend the authority to use contractors.

Finally, Mental Health did not submit to the Legislature required reports about the department's efforts to hire staff to evaluate offenders and the impact of Jessica's Law on the program. Mental Health did not provide us with a timeline indicating the expected dates for completing these reports, nor did the department explain why it had not submitted them. Without the reports, the Legislature may not have the information necessary for it to provide oversight and make informed decisions.

Recommendations

To increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the referral process to adhere more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.

[1] State law requires Mental Health to use contractors for third and fourth evaluations when the first two evaluators disagree. The change of law in 2012 will not affect Mental Health's use of contractors for this purpose.

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- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.

- Assessing the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier before each offender's scheduled release date in order to meet its six-month statutory deadline.

To make certain that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and the impact of Jessica's Law on the program.

Agency Comments

Mental Health indicated that it is taking actions that are responsive to each of our recommendations. For example, Mental Health stated it is already working with Corrections to streamline the referral process to eliminate duplicate effort and increase efficiency.

Corrections indicated that it agrees that improvements can be made in streamlining the referral process and that it has already implemented steps to improve the timeliness of its referrals to Mental Health. Corrections stated that it would address the specific recommendations in its corrective action plan at 60-day, six-month, and one-year intervals.

Introduction

Background

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State law designates these offenders as sexually violent predators (SVPs).

The Sexually Violent Predator Act (Act) governs the program. The Act lists crimes that qualify as sexually violent offenses and defines *predatory* to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization. The Act also requires that SVPs have diagnosed mental disorders that make them likely to engage in future sexually violent behavior if they do not receive appropriate treatment and custody. Determining whether offenders are SVPs and committing them for treatment is a civil rather than criminal process. Thus, crimes that offenders committed before passage of the Act can contribute to offenders' commitment as SVPs.

Since the passage of the Act, certain state laws have further amended the program. Specifically, in September 2006, Senate Bill 1128 became law and added more crimes to the list of sexually violent offenses that could cause offenders to qualify as SVPs. More dramatically, on November 7, 2006, California voters passed Proposition 83, also known as Jessica's Law.[2] In addition to creating residency restrictions and global positioning system monitoring for certain sex offenders, Jessica's Law added more crimes to the list of sexually violent offenses, and it also decreased from two to one the number of victims necessary for the SVP designation. Both Senate Bill 1128 and Jessica's Law abolished the previous two-year term of civil commitment for an SVP and instead established a commitment term of indeterminate length that includes yearly evaluations to determine an SVP's readiness for release.

The Process for Identifying, Evaluating, and Committing SVPs

The Department of Mental Health (Mental Health) and the Department of Corrections and Rehabilitation (Corrections), including its Board of Parole Hearings (Parole Board), play critical roles in identifying, evaluating, and recommending the commitment of an offender as an SVP. However, a judge or jury

[2] The law was named in memory of Jessica Lunsford, a nine-year-old girl from Florida who died in 2005 as a result of a violent sexual crime committed by a habitual convicted sex offender.

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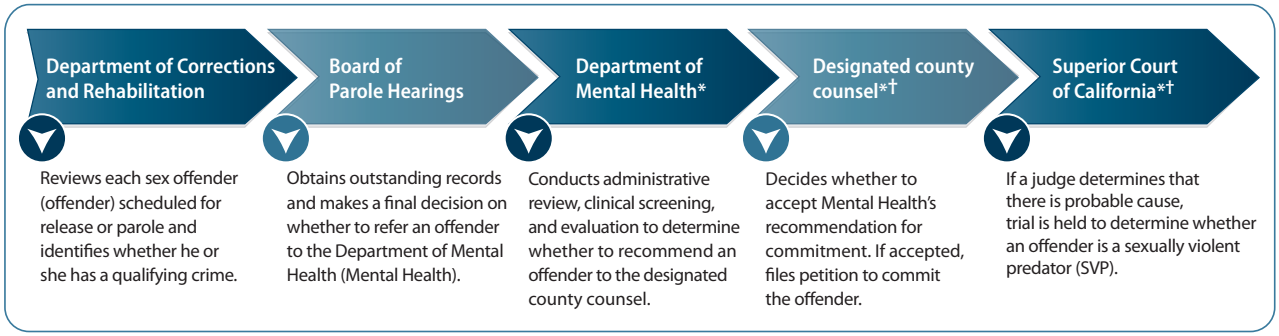
at a California superior court makes the final determination of an offender's SVP status. Figure 1 shows the relationships among the steps in the process. If at any point in this process an offender fails to meet SVP criteria, the offender completes the term of his or her original sentence or parole.

Figure 1
The Multiagency Process for Committing a Sexually Violent Predator



Sources: Mental Health, Department of Corrections and Rehabilitation, Board of Parole Hearings, and California Welfare and Institutions Code, Section 6600 et seq.

* During this phase of the process, the agency may find that the offender does not meet SVP criteria, in which case the offender completes the term of his or her original sentence or parole.

† Recommendation is made to the designated counsel in the county where the offender was convicted most recently. The designated counsel files the request to commit in the same county.

Corrections' Identification of Potential SVPs

State law requires Corrections and its Parole Board to screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories. To complete these screenings, the law requires Corrections to use a structured screening instrument developed and updated by Mental Health in consultation with Corrections. According to state law, when Corrections determines through this screening process that offenders may be SVPs, it must refer the offenders to Mental Health for further evaluation at least six months before the offenders' scheduled release dates.[3]

Mental Health's Evaluation of Potential SVPs

State law requires that Mental Health evaluate as potential SVPs any offenders whom Corrections refers to Mental Health. It specifies that for each of these offenders, Mental Health must conduct a full evaluation consisting of assessments by two mental health professionals who must be psychiatrists or psychologists. However, in practice, Mental Health does not conduct an evaluation of every offender

[3] If the offender has been in Corrections' custody for less than nine months or if judicial or administrative action modified his or her release date, the sixth-month timeline does not apply.

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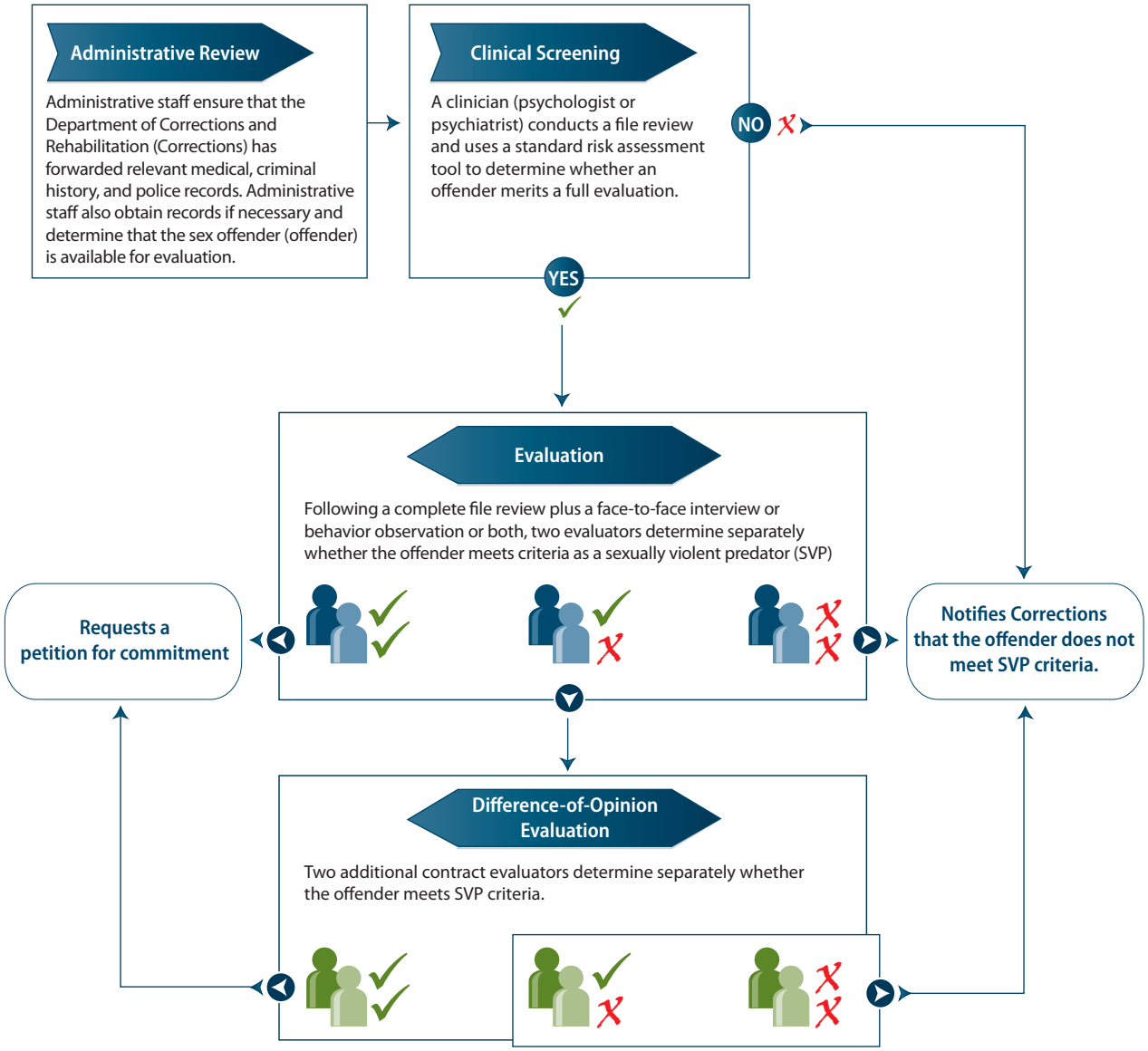
referred by Corrections; rather, it first conducts an administrative review and then a clinical screening to determine whether an offender merits an evaluation. We discuss these administrative reviews and clinical screenings in more detail later in the report. Figure 2 illustrates the process that Mental Health uses to determine whether it should recommend to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) the offenders referred by Corrections for commitment to the program.

Figure 2
Department of Mental Health's Process for Reviewing, Screening, and Evaluating a Sex Offender



Sources: California Welfare and Institutions Code, Section 6601 et seq. and program manager for the Department of Mental Health's Sex Offender Commitment Program.

Indicators That a Sex Offender Is a Sexually Violent Predator

The Department of Mental Health (Mental Health) uses the following criteria defined in state law and clarified by court decisions to determine whether a sex offender is a sexually violent predator (SVP):

- The individual has been convicted of a sexually violent offense, such as rape when committed with force, threats, or other violence.
- The offender suffers from a diagnosed mental disorder.
  - The law defines *diagnosed mental disorder* as including conditions affecting the emotional and volitional capacity that predispose the person to committing criminal sexual acts to a degree that the person is a menace to the health and safety of others.
  - Most diagnoses involve paraphilia or related disorders—sexual behavior that is atypical and extreme and that causes distress to the individual or harm to others. However, other disorders may qualify under the law.
- The diagnosed mental disorder makes the person likely to engage in sexually violent, predatory criminal behavior in the future without treatment and custody.
  - The law defines *predatory* offenses as acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purpose of victimization.
  - Regulations require evaluators to use standardized risk assessment tools and to consider various risk factors to determine the likelihood that an offender will commit future crimes.

Sources: Bureau of State Audits' review of case files, interviews of Department of Mental Health staff and evaluators, analysis of California Welfare and Institutions Code, Section 6600 et seq., Title 9 of the California Code of Regulations, and California Supreme Court decisions.

State law requires Mental Health's evaluators to determine whether the offender meets the criteria for the SVP designation (SVP criteria), which the text box describes in more detail. If the first two evaluators agree that the offender meets the criteria, Mental Health must request a petition for civil commitment, as discussed in the next section. If the first two evaluators disagree, the law requires that Mental Health arrange for two additional evaluators to perform evaluations. The two additional evaluators must meet certain professional criteria and cannot be employees of the State. If the two additional evaluators agree that the offender meets the criteria, Mental Health must request a commitment. If the two additional evaluators disagree or if they agree that the offender has not met the criteria, Mental Health generally cannot request a commitment unless it believes the evaluator applied the law incorrectly.

The Court's Commitment and the State's Treatment of SVPs[4]

When Mental Health's evaluators conclude that an offender meets SVP criteria, state law requires that Mental Health request that the designated counsel of the county in which the offender was most recently convicted file a petition in court to commit the offender. If the county's designated counsel agrees with Mental Health's recommendation, he or she must file in superior court a petition for commitment of the offender. If a judge finds probable cause that the offender is an SVP, he or she orders a trial for a final determination of whether the offender is an SVP. If the offender or petitioning attorney does not demand a jury trial, the judge conducts the trial without a jury. During the court proceedings, offenders are entitled to representation by legal counsel and medical experts. Each county's board of supervisors appoints a designated counsel, the district attorney or county counsel responsible for handling SVP cases.

[4] We did not audit the designated counsels, the courts, or the actual treatment programs because they were outside the scope of our review.

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The court commits offenders it finds are SVPs to secure facilities for treatment, and these commitments have indeterminate terms. According to Mental Health's program manager, in May 2011 there were 521 male SVPs and one female SVP committed to state hospitals. State law requires that Mental Health examine the mental condition of committed SVPs at least once a year. If Mental Health determines that offenders either no longer meet SVP criteria or that less restrictive treatment would better benefit them yet not compromise the protection of their communities, Mental Health must ask a court to review their commitments for unconditional discharge or for conditional release.[5] If the court grants conditional releases to committed SVPs, they will enter community treatment and supervision under the Conditional Release Program, which Mental Health operates. According to Mental Health's program manager, the department has eight SVPs in the Conditional Release Program as of May 2011.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to review the process that Corrections and its Parole Board use to refer offenders to Mental Health as well as Mental Health's process for evaluating these offenders to determine whether they qualify as SVPs. Specifically, the audit committee directed us to determine whether Mental Health's process includes a face-to-face interview for every sex offender referred by Corrections, whether Mental Health uses staff or contractors to perform the evaluations, and whether the evaluators' qualifications meet relevant professional standards and laws and regulations. If we determined that Mental Health uses contractors, the audit committee directed us to determine when the practice began and whether using contractors is allowable under state law. To understand the impact of Jessica's Law on the program, the audit committee directed us to identify the number of offenders that Corrections and its Parole Board referred to Mental Health in each year since 2006. The audit committee also asked us to identify the number of referred offenders who received an in-person screening by Mental Health, the number screened by Mental Health through case-file review only, the number of offenders that ultimately received a civil commitment to the program, and the number of offenders released who then reoffended. Finally, the audit committee asked us to determine whether Mental Health submitted reports mandated by the Legislature. Table 1 lists the methods we used to answer these audit objectives.

[5] Nothing in the Act prohibits committed SVPs from asking courts to release them even if the SVPs do not have a recommendation from Mental Health.

The scope of the audit did not include reviews of the designated counsels' efforts or the courts' processes for committing offenders as SVPs. The scope also did not include the treatment provided to offenders at state hospitals or through the Conditional Release Program.

Table 1
Methods of Addressing Audit Objectives

AUDIT OBJECTIVE	METHOD
Understand the criteria for committing sexually violent predators (SVPs) under the Sex Offender Commitment Program (program).	Reviewed relevant laws, regulations, and other background materials.
Review the process at the Department of Corrections and Rehabilitation (Corrections) and the Board of Parole Hearings for identifying and referring potential SVPs to the Department of Mental Health (Mental Health).	• Interviewed key officials from the Classification Services Unit of Corrections' Division of Adult Institutions and from the Board of Parole Hearings. • Reviewed Corrections' policy manuals.
Understand the process at Mental Health for screening and evaluating potential SVPs.	• Interviewed key officials at Mental Health's Long-Term Care Services Division. • Interviewed evaluators under contract to Mental Health. • Reviewed Mental Health's policy manuals.
Assess the effectiveness of Corrections' and Mental Health's processes for referring, screening, and evaluating offenders.	Reviewed Mental Health's case files, clinical screening forms, and written evaluations of sex offenders (offenders). Review of case files included Corrections' referral packets.
Determine the extent to which contractors perform evaluations. Assess the qualifications of contractors who conduct evaluations and of state employees who could also conduct evaluations.*	• Reviewed bidding documentation, contracts, and relevant supporting documents, as well as personnel files. • Reviewed the qualifications required by law. • Analyzed data from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database).†
Identify the number of offenders whom Corrections referred to Mental Health. Determine the number of assessments, screenings, and evaluations that Mental Health performed. Identify the number of offenders whom courts ultimately committed as SVPs. Determine the recidivism rate of those not committed as SVPs. Assess the impact of Jessica's Law on the program.	Analyzed data from Mental Health's database and from Corrections' Offender Based Information System.†
Determine whether Mental Health complied with the requirement to report to the Legislature the status of its efforts to hire state employees to replace contractors. Determine whether Mental Health complied with the requirement to report to the Legislature the impact of Jessica's Law on the program.	Requested copies of required reports. Interviewed key officials at Mental Health and at the California Health and Human Services Agency.

Sources: Joint Legislative Audit Committee audit request #2010-116 for audit objectives, Bureau of State Audits' planning and scoping documents, and analysis of information and documentation identified in the table column titled Method above.

* We did not note any reportable exceptions related to the qualifications of the contractors who conduct evaluations or the state employees who could also conduct evaluations. The contractors met the qualifications required of them by state law as well as the more stringent requirements that Mental Health imposed through its competitive contracting process. As the Audit Results section of this report discusses, state employees have rarely conducted evaluations to date. However, all of the program's state-employed consulting psychologists who conduct clinical screenings met the minimum qualifications specified by the Department of Personnel Administration for their positions.

† We assessed the reliability of the data in these systems and reported our results beginning on page 11.

To address several of the audit objectives approved by the audit committee, we relied on data provided by Mental Health and Corrections. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information. To comply with this standard, we assessed each system for the purpose for which we used the data in this report. We assessed the reliability of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process (as displayed in Table 3 on page 14), and the extent to which contractors perform evaluations (as displayed in Figure 5 on page 31). Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy and completeness of Mental Health's database. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For completeness testing, we haphazardly sampled 29 referrals and tested to see if these referrals exist in the database and found no errors. For accuracy testing, we selected a random sample of 29 referrals and tested the accuracy of 21 key fields for these referrals. Of the 21 key fields tested we found three errors in six key fields. Based on our testing and analysis, we found that Mental Health's database is not sufficiently reliable for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process, and the extent to which contractors perform evaluations. Nevertheless, we present these data as they represent the best available source of information.

In addition, we assessed the reliability of Corrections' Offender Based Information System (Corrections' database) for the purpose of identifying the number of referrals that ultimately resulted in an offender's being committed as an SVP, and the recidivism rate of those not committed as SVPs. Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy of Corrections' database. We did not perform completeness testing because the documents needed are located at the 33 correctional institutions located throughout the State, so conducting such testing is impractical. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For accuracy testing, we selected a random sample of 29 offenders and tested the accuracy of 12 key fields related to these offenders and found eight errors. Based on our testing and analysis, we found that Corrections' database is of undetermined reliability to be used for the purpose of identifying the number of referrals that ultimately resulted in an offender being committed as an SVP, and to calculate the recidivism rate of those not committed as SVPs.

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Audit Results

Although the Department of Mental Health Evaluates Thousands of Offenders Each Year, the Courts Commit Only a Tiny Percentage as Sexually Violent Predators

As the Introduction explains, the passage of Jessica's Law in 2006 resulted in significantly more sex offenders (offenders) becoming potentially eligible for commitment as sexually violent predators (SVPs) under the Sex Offender Commitment Program (program). However, the courts have committed very few of the thousands of offenders whom the Department of Corrections and Rehabilitation (Corrections) referred to the Department of Mental Health (Mental Health) for evaluation. In fact, as Table 2 shows, the actual number of offenders whom the courts committed between 2007 and 2010 represent less than 1 percent of Corrections' referrals to Mental Health. Even if the courts committed all of the offenders still awaiting trial, these offenders would represent less than 2 percent of all referrals. Due to the limitations of its database, Mental Health did not track the specific reasons why referred offenders did not meet the criteria for commitment as SVPs (SVP criteria). Such tracking could help Mental Health better identify trends.

Table 2
Number of Program Referrals and Commitments
2005 Through 2010

	2005	2006	2007	2008	2009	2010*
Total referrals	512	1,850	8,871	7,338	6,765	6,126
Total commitments†	15	27	43	16	3	0
Commitments as a percentage of total referrals each year	2.93%	1.46%	0.48%	0.22%	0.04%	-

Source: Bureau of State Audits' analysis of data collected from the Department of Mental Health's (Mental Health) Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

Jessica's Law Has Not Resulted in the Commitment of Many More Offenders

As the Introduction discusses, Jessica's Law expanded the population of offenders eligible for the program and thus substantially increased the number of evaluations that

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Mental Health has performed each year. Table 3 shows that since the passage of Jessica's Law, the total number of Corrections' referrals of offenders to Mental Health ballooned from 1,850 in 2006 to 8,871 in 2007. As a result, the number of offenders whom Mental Health reviewed or evaluated at each stage of its process also increased from 2006 to 2007. Mental Health completed administrative reviews for nearly 96 percent of the referrals it received from Corrections.[6] Mental Health then forwarded about half of these cases to clinical screenings in which clinicians determined whether the offenders merited full evaluations.[7] The number of these evaluations that Mental Health performed rose from 594 in 2006 to 2,406 in 2007. Although the number of evaluations dropped from its high point in 2007, the number was still four times higher in 2010 than in 2005, the year before Jessica's Law took effect.

Table 3
Number of Referrals in Each Step of the Sexually Violent Predator Commitment Process
2005 Through 2010

ENTITY	STEP IN THE COMMITMENT PROCESS	2005	2006	2007	2008	2009	2010*	TOTAL	PERCENTAGE OF TOTAL REFERRALS
Department of Corrections and Rehabilitation	Referrals to Mental Health	512	1,850	8,871	7,338	6,765	6,126	31,462	100.0%
Department of Mental Health (Mental Health)	Administrative reviews	509	1,448	8,230	7,137	6,738	6,013	30,075	95.6
	Clinical screenings†	1	304	4,400	3,537	3,470	3,823	15,535	49.4
	Evaluations	217	594	2,406	1,366	966	887	6,436	20.5
	Recommendations to designated counsel	48	92	181	99	52	51	523	1.7
The Court System	Designated counsel petitions	46	88	169	92	39	23	457	1.5
	Probable cause hearings	46	88	169	92	38	23	456	1.4
	Trials	37	77	150	72	22	4	362	1.2
	Offenders committed‡	15	27	43	16	3	0	104	0.3

Source: Bureau of State Audits' analysis of data collected from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† According to Mental Health's program manager, Mental Health did not implement clinical screenings until sometime in 2006.

‡ These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

6 The total number of referrals to Mental Health does not agree with the number of referrals that Mental Health reviewed in part because the department did not consistently record in its database that it had completed reviews.

7 According to Mental Health's program manager, the department introduced the clinical screening into its process specifically to address the dramatic rise in referred offenders that Jessica's Law prompted. We discuss these screenings in more depth later in the report.

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Despite the increased number of referrals, as of September 2010, the relative percentage of offenders whom the courts committed as SVPs declined each year after the first full year that Jessica's Law was in effect. According to Mental Health's program manager, about 300 offenders are still awaiting trial. Nevertheless, even if the courts committed all of those awaiting trial, the total number committed would still represent a tiny fraction of all referrals from Corrections. As Table 3 shows, Mental Health screened a large number of offenders referred by Corrections, indicating that neither department displayed a lack of effort in identifying eligible SVPs. However, despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law.

Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism. Additionally, Mental Health's program manager provided an analysis it performed of the types of crimes offenders committed who it recommended for commitment to designated counsels since Jessica's Law took effect. This analysis found that, for every recommendation associated with an offender who committed one of the new crimes added by Jessica's Law, Mental Health made four recommendations related to offenders who committed crimes that would have made them eligible for commitment before the passage of Jessica's Law. This disparity could suggest that crimes added under Jessica's Law as sexually violent offenses correlate less with the likelihood that offenders who commit such crimes are SVPs than do the crimes designated in the original Sexually Violent Predator Act.

Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts.

Because Mental Health Has Not Tracked the Reasons Offenders Did Not Qualify as SVPs, It Cannot Effectively Identify Trends and Implement Changes to Increase Efficiency

Although analyzing Mental Health's data allowed us to determine the number of referrals at each step of the process, the data lack sufficient detail for us to determine why specific offenders' cases did not progress further in that process. For example, the data did

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not show the number of offenders that Mental Health declined to forward to evaluations because the offenders did not have mental disorders rather than because they did not commit predatory crimes. Although the database includes a numeric code that can identify Mental Health's detailed reason for determining why an offender does not meet SVP criteria, Mental Health did not use these codes for the results of its clinical screenings. Instead, when a clinician determined that the offender did not meet SVP criteria, the numeric code used indicated only that the result was a negative screening and was not specific to the clinician's conclusions recorded on the clinical screening form. For offenders whom Mental Health determines do not meet SVP criteria based on evaluations, Mental Health's database has detailed codes available that convey the specific reasons for its decisions on cases. However, for the period under review, Mental Health did not consistently use the codes. According to the program manager, in January 2009 Mental Health stopped using the detailed codes because it determined that the blend of codes used to describe a full evaluation were too confusing and did not result in meaningful data. Because Mental Health did not use the codes consistently, it could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria.

Mental Health could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria because it did not use codes for its database consistently.

We examined some of the conclusions recorded by Mental Health's psychologists on their clinical screening forms, and we found that the psychologists provided specific reasons for their conclusions that offenders did not meet SVP criteria. For example, some offenders did not meet the criteria because they were not likely to engage in sexually violent criminal behavior, while in other cases the offenders lacked diagnosed mental disorders. Because clinicians do identify the specific reasons for their conclusions on their screening forms, Mental Health should capture this information in its database so that it can inform itself and others about the reasons offenders throughout the program do not meet SVP criteria.

Additionally, although the documented reasons why individual offenders are in Corrections' custody are available to Mental Health, the department cannot summarize this information across the program. This situation prevents Mental Health from tracking the number of offenders that Corrections referred because of parole violations as opposed to new convictions. According to the program manager, Mental Health cannot summarize these data because some of the information appears in the comments or narrative case notes boxes in Mental Health's database. As a result, we used Corrections' data, not Mental Health's, to provide the information in this report about the reasons that offenders were in Corrections' custody during the period that we reviewed. By improving its ability to summarize this type of data, Mental Health could better inform itself and Corrections about trends in the

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reasons offenders do not qualify for the program. Mental Health could then use its knowledge of these trends to improve the screening tool that Corrections uses to identify potential SVPs. As of June 2011, Mental Health's program manager indicated that the program is submitting requests to the department's information technology division to upgrade the database to track this type of information.

Few Offenders Have Been Convicted of Sexually Violent Offenses Following a Decision Not to Commit Them

To take one measure of the effectiveness of the program's referral, screening, and evaluation processes, we analyzed data from Corrections and Mental Health to identify offenders who were not committed as SVPs but who carried out subsequent parole violations and felonies. In particular, we looked for instances in which these offenders later perpetrated sexually violent offenses. As Table 4 on the following page shows, 59 percent of these offenders whom Corrections released between 2005 and 2010 subsequently violated the conditions of their paroles. To date, only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed. Although higher numbers of offenders were subsequently convicted of felonies that were not sexually violent offenses, even those numbers were relatively low.

Only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed.

Corrections' Failure to Comply With the Law When Referring Offenders Has Significantly Increased Mental Health's Workload

State law outlines Corrections' role in referring offenders to Mental Health for evaluation as potential SVPs. Specifically, Section 6601(b) of the California Welfare and Institutions Code mandates that Corrections and its Board of Parole Hearings (Parole Board) screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories and then determine if they are likely to be SVPs. However, in referring offenders, Corrections and the Parole Board did not screen offenders based on all of these criteria. As a result, Corrections referred many more offenders to Mental Health than the law intended. Moreover, Corrections' process resulted in a high number of re-referrals, or referrals of offenders that Mental Health previously concluded were not SVPs. State law does not prevent Corrections from considering the results of past evaluations, and we believe that revisiting the results of offenders' earlier screenings and evaluations is reasonable even if the law does not explicitly require Corrections to do so. According to

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Mental Health, for fiscal year 2009–10, the State paid $75 for each clinical screening that its contractors completed and an average of $3,300 for each evaluation. By streamlining its process, Corrections could reduce unnecessary referrals and the associated costs.

Table 4
Reasons for Sex Offenders' Return to the Department of Corrections and Rehabilitation After a Referral to the Department of Mental Health
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Number of offenders with first time referrals who the Department of Corrections and Rehabilitation (Corrections) subsequently released	**231**	**1,407**	**5,780**	**2,834**	**2,023**	**1,237**	**13,512**
Sex Offenders (offenders) who later violated parole†	92	987	4,212	1,434	868	318	7,911
Percentage of total offenders	**40%**	**70%**	**73%**	**51%**	**43%**	**26%**	**59%**
Offenders who were later convicted of a new felony†	1	39	89	4	1	0	134
Percentage of total offenders	**0%**	**3%**	**2%**	**0%**	**0%**	**0%**	**1%**
Offenders who were later convicted of a new sexually violent offense‡	0	0	1	0	0	0	1
Percentage of total offenders	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**

Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and from Corrections Offender Based Information System (OBIS) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† Some overlap may exist among these categories because it is possible for an offender to return to Corrections' custody more than once and for a different reason each time.

‡ The offender in this category is also represented in the *New Felony* category.

In addition, Corrections and the Parole Board frequently did not meet the statutory deadline for referring offenders to Mental Health at least six months before the offenders' scheduled release from custody. In 2009 and 2010, the median amount of time for a referral that Corrections and the Parole Board made to Mental Health was less than two months before the scheduled release date of the offender. Because Corrections and its Parole Board referred many offenders with little time remaining before their scheduled release dates, Mental Health may have had to rush its clinical screening process and therefore may have caused it to evaluate more offenders than would have otherwise been necessary.

Corrections Refers Offenders to Mental Health Without First Determining Whether They Are Likely to Be SVPs

As discussed previously, state law defines the criteria that Corrections and its Parole Board must use to screen offenders to determine if they are likely to be SVPs before referring the offenders to Mental Health. Specifically, state law mandates that Corrections must consider whether an offender committed a sexually violent predatory offense, and the law defines *predatory* acts as those directed toward a stranger, a person of casual acquaintance, or a person with whom an offender developed a relationship for the primary purpose of victimizing that individual. The law also specifies that Corrections and the Parole Board must use a structured screening instrument developed and updated by Mental Health in consultation with Corrections to determine if an offender is likely to be an SVP before referring him or her. Further, state law requires that when Corrections determines through the screening that the person is likely to be an SVP, it must refer the offender to Mental Health for further evaluation.

However, during the time covered by our audit, Corrections and its Parole Board referred all offenders convicted of sexually violent offenses to Mental Health without assessing whether those offenses or any others committed by the offender were *predatory* in nature or whether the offenders were likely to be SVPs based on other information that Corrections could consider. Instead, it left these determinations solely to Mental Health. Moreover, although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law. According to the chief of the classification services unit (classification unit chief) for Corrections' Division of Adult Institutions and the former program operations chief deputy for the Parole Board (parole board deputy),[8] Corrections and the Parole Board did not determine if a qualifying offense or any other crime was predatory when they made a referral. Our legal counsel advised us that according to the plain language of Section 6601(b) of the California Welfare and Institutions Code, Corrections and the Parole Board must determine whether the person committed a predatory offense and whether the person is likely to be an SVP before his or her referral to Mental Health.

Although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law.

Because Corrections did not consider whether offenders' crimes were predatory and whether the offenders were likely to be SVPs, it referred many more offenders to Mental Health than the law intended. This high number of referrals unnecessarily

[8] Subsequent to our interview, this official moved to Corrections' Division of Adult Institutions.

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increased Mental Health's workload at a cost to the State. We found several referrals in our sample involving offenders who did not commit predatory offenses. For example, we reviewed cases in which Corrections referred an offender for a sexual crime against his own child, and another for a sexual crime committed against the offender's own grandchild. Although these crimes were serious, they did not meet the law's definition of *predatory* because the victims were not strangers or mere acquaintances.

Mental Health and Corrections' current processes also miss an opportunity to make the referral process more efficient by eliminating duplicate efforts. When considering whether an offender requires an evaluation, Mental Health's clinical screeners use a risk assessment tool—California's State Authorized Risk Assessment Tool for Sex Offenders (STATIC-99R)—as part of determining the individual's risk of reoffending. Corrections uses this same tool in preparation for an adult male offender's release from prison. According to the parole board deputy, Corrections' Division of Adult Parole Operations completes a STATIC-99R assessment approximately eight months before the offender's scheduled parole. Although state law does not specifically require Corrections to consider the STATIC-99R scores as part of its screening when making referrals to Mental Health, doing so would eliminate duplicate efforts and reduce Mental Health's workload because Corrections would screen out, or not refer, those offenders it determines have a low risk of reoffending. This type of screening would reduce costs at Mental Health because fewer clinical screenings would be necessary.

Although Corrections is not required to consider risk assessment scores to determine an offender's likelihood of reoffending when making referrals, doing so would eliminate duplicate efforts and reduce Mental Health's workload.

When we discussed the possibility of Corrections using the STATIC-99R as part of its screening of offenders before it refers them to Mental Health, the parole board deputy stated that he was unaware that Corrections ever considered this approach. However, the California High Risk Sex Offender and Sexually Violent Predator Task Force—a gubernatorial advisory body whose membership included representatives from Corrections, Mental Health, and local law enforcement, among others—recommended in a December 2006 report that Corrections incorporate STATIC-99R into its process. According to the classification unit chief, Corrections is researching the status of its efforts regarding the task force's recommendation.

Many of Corrections' Referrals Involve Offenders Whom Mental Health Has Already Determined Do Not Qualify as SVPs

One of the most useful actions Corrections could take to increase its efficiency when screening offenders for possible referral to Mental Health is to consider the outcome of previous referrals.

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Corrections' screening process does not consider whether Mental Health has already determined that an offender does not meet the criteria to be an SVP. As a result, these re-referrals significantly affect Mental Health's caseload. As Table 5 shows, 45 percent of Corrections' referrals to Mental Health since 2005 were for offenders whom it had previously referred and whom Mental Health had concluded did not meet SVP criteria. Many of these cases had progressed only as far as the clinical screenings before Mental Health determined that the offenders did not meet SVP criteria. Table 5 also shows that for 18 percent, or 5,772, of these re-referral cases, Mental Health had previously performed evaluations and concluded that the offenders did not qualify as SVPs. For these 5,772 re-referral cases, Mental Health's previous evaluations occurred within one year for 39 percent, or 2,277, of the cases. Another 30 percent took place within two years.

Table 5
Number of Referrals to the Department of Mental Health for Sex Offenders Who Previously Did Not Meet Sexually Violent Predator Criteria
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Total referrals	**512**	**1,850**	**8,871**	**7,338**	**6,765**	**6,126**	**31,462**
Number of referrals of sex offenders (offenders) whom the Department of Mental Health (Mental Health) had previously found did not qualify as sexually violent predators (SVPs) without evaluations	31	53	1,254	2,306	2,511	2,382	8,537
Percentage of total referrals	**6%**	**3%**	**14%**	**31%**	**37%**	**39%**	**27%**
Number of referrals of offenders who previously received evaluations and did not qualify as SVPs	164	167	721	1,448	1,640	1,632	5,772
Percentage of total referrals	**32%**	**9%**	**8%**	**20%**	**24%**	**27%**	**18%**
Total number of referrals of offenders who previously did not meet SVP criteria	195	220	1,975	3,754	4,151	4,014	14,309
Percentage of total referrals	**38%**	**12%**	**22%**	**51%**	**61%**	**66%**	**45%**

Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent numbers for a partial year—January 2010 through September 2010.

To illustrate the magnitude of this re-referral problem, we noted that Corrections' approximately 31,500 referrals to Mental Health for the period under review represented nearly 15,600 offenders. Of these individuals, Corrections referred almost half, or 7,031 offenders, to Mental Health on at least two occasions. In fact, Figure 3 on the following page shows that Corrections referred 8 percent of offenders between five and 12 times between 2005 and 2010.

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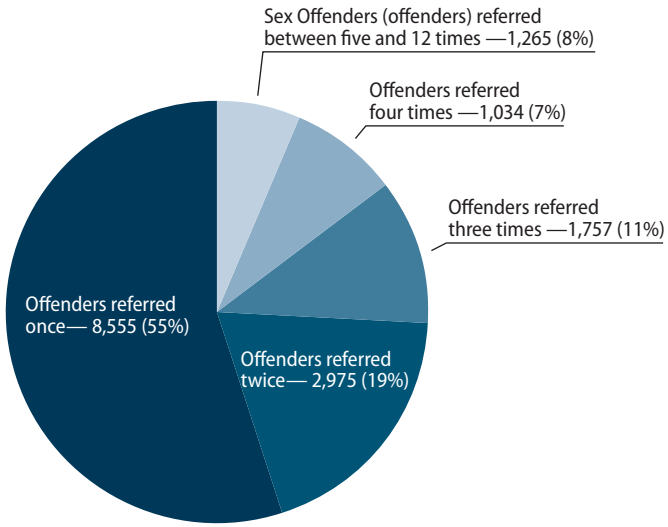
Figure 3
Number of Times the Department of Corrections and Rehabilitation Referred Sex Offenders to the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Notes: The data for 2010 represent figures for a partial year—January 2010 through September 2010. As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

Although the law does not specifically require Corrections to consider the outcome of offenders' previous referrals in its screening process, we believe it is reasonable in these cases for Corrections to consider whether the nature of a parole violation or a new crime might modify an evaluator's opinion. This consideration would be in line with the law's direction that Corrections refer only those offenders likely to be SVPs based on their social, institutional, and criminal histories. Many previously referred offenders are, in fact, unlikely to be SVPs given Mental Health's past assessments that they did not meet SVP criteria. By considering whether previously referred offenders warrant new referrals, Corrections could eliminate duplicate efforts and reduce unnecessary workload and costs.

Among all referrals made during the period we reviewed, 63 percent involved offenders in Corrections' custody due to parole violations. Although not all parole violators could be screened out of re-referral through a process that considers the nature of the parole violations, many could be. When we discussed with Mental Health whether it had asked Corrections to cease making re-referrals in those instances in which parole violations were not new sex-related offenses, Mental Health provided us

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with a copy of a September 2007 Corrections' memorandum to its staff stating that Mental Health and Corrections had agreed to streamline the referral procedures for parole violators. The memorandum instructed Corrections' staff not to refer offenders if Mental Health had previously determined that the offenders were not SVPs and if the offenders were currently in custody for specified parole violations that Mental Health's psychologists had determined from a clinical standpoint would not change the offenders' risk of committing new sexual offenses. However, five months later, another Corrections' memorandum rescinded these revised procedures. Corrections' classification unit chief told us that although she was not with the program at the time, she believed that the former Governor's Office had instructed the departments to discontinue using the streamlined process because it did not comply with the law. We asked Corrections for more details about this legal determination, but Corrections could not provide any additional information. According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

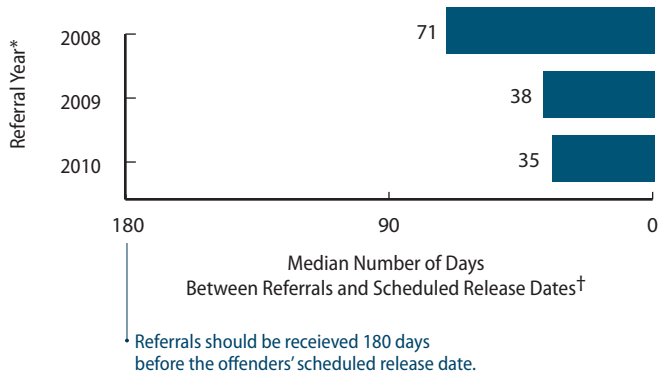
According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

Corrections' Failure to Refer Offenders Within Statutory Time Frames May Force Mental Health to Rush Its Screening Process

State law requires that Corrections refer offenders to Mental Health at least six months before their scheduled release dates. However, according to the median amount of time for referrals displayed in Figure 4 on the following page, Corrections did not meet this deadline for a significant portion of referrals during the three years for which Corrections and Mental Health were able to provide data to us.[9] Corrections' procedure manual states that it will screen offenders nine months before their scheduled release dates unless it receives them with less than nine months to their release, in which case the department has alternate procedures. This policy, if followed, should ensure that Corrections forwards cases to Mental Health at least six months before the offenders' release, as required by law. However, the parole board deputy noted that issues such as workload and missing documents can prevent Corrections from making these referrals in a timely manner.

[9] State law does not apply this requirement for offenders whose release dates are changed by judicial or administrative actions or for offenders in Corrections' custody for less than nine months. Although we could not exclude from our data analysis those offenders whose release dates were altered by judicial or administrative actions, our review of case files at Mental Health revealed no obvious instances in which such alterations occurred. This observation suggests that judicial or administrative actions were not the primary cause of Corrections' lack of timeliness. We excluded from our analysis those offenders who, as of the date of their referral, had been in Corrections' custody for less than nine months.

Figure 4
Median Number of Days Between the Department of Corrections and Rehabilitation's Referrals to the Department of Mental Health and Sex Offenders' Scheduled Release Dates at Time of Referral



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and the Offender Based Information System (OBIS) from the Department of Corrections and Rehabilitation (Corrections) for 2008 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* Data analysis September 16, 2008, through September 2010.

† Analysis does not include sex offenders who were in Corrections' custody for less than nine months as of the date of their referral.

Late referrals shorten the amount of time available for Mental Health to evaluate offenders properly. In fact, in one case we reviewed, Mental Health received the referral one day before the offender's scheduled release. In another case, Mental Health received a referral for an offender 11 days before his scheduled release. Although Mental Health can request that the Parole Board place a temporary hold on an offender's release to extend the amount of time that Mental Health has to evaluate him or her, state law requires that the Parole Board have good cause for extending the offender's stay in custody. Mental Health's program manager stated that in practice, Mental Health requests a hold from the Parole Board when it determines that it cannot complete an evaluation by the offender's scheduled release date. The program manager also stated that sometimes the time remaining before an offender's release is so short that the department must rush an offender through a clinical screening in order to ensure that it can request a hold.

Although Mental Health Did Not Conduct Full Evaluations of All Referred Offenders, It Generally Ensured That Offenders Were Properly Screened and Evaluated

Our review indicated that Mental Health's process for determining whether it should perform full evaluations of referred offenders has been generally effective and appropriate. As discussed earlier,

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the number of offenders whom Corrections referred to Mental Health increased significantly after the passage of Jessica's Law. To manage this workload, Mental Health used the administrative reviews to ensure that it has all of the information necessary to perform clinical screenings, which it uses to determine whether offenders warrant full evaluations. Between February 2008 and June 2010, Mental Health also used the administrative reviews as opportunities to identify offenders who did not warrant clinical screenings because Mental Health had evaluated these offenders previously and had determined that they did not meet SVP criteria. Mental Health rescinded this policy, and, as previously discussed, Corrections also rescinded its similar policy for screening out certain offenders from re-referral. However, we believe that Mental Health should work with Corrections to reduce unnecessary referrals.

We believe that Mental Health should work with Corrections to reduce unnecessary referrals.

Mental Health has for the most part conducted evaluations of offenders effectively; however, for a time, it did not always assign the required number of evaluators to cases. Specifically, Mental Health's data indicates that it did not arrange for two evaluators to conduct the evaluations for 161 offenders, as state law directs. In addition, for at least a year prior to August 2008, Mental Health did not assign a fourth evaluator to each case in which the first two evaluators disagreed as to whether the offender met SVP criteria and in which the third evaluator also did not believe that the offender met SVP criteria. In cases requiring a third and fourth evaluator to determine whether an offender meets SVP criteria, state law may need clarification. Nonetheless, we believe that the selective use of a fourth evaluator in those instances when the third evaluator concludes the offender meets SVP criteria is a cost-effective approach. Because the third and fourth evaluators must both agree that the offender meets SVP criteria, the conclusion of the fourth evaluation is relevant only if the third evaluator concludes that the offender meets SVP criteria.

Mental Health's Administrative Review and Clinical Screening Processes Appear Prudent

As the Introduction discusses, state law specifies that Mental Health must conduct a full evaluation of every offender Corrections refers to it. However, in practice, Mental Health conducts an administrative review and clinical screening before performing a full evaluation. Although state law does not specify that Mental Health should perform these preliminary processes, doing so appears to save the State money without unduly affecting public safety because these procedures allow Mental Health to save the cost of evaluations for offenders who do not meet SVP criteria.

According to Mental Health's program manager, when Corrections began referring more offenders in response to Jessica's Law, the number of incomplete and invalid referrals also increased. The program manager stated that Mental Health implemented the administrative reviews and clinical screenings as quality improvement measures. Specifically, the administrative review ensures that each referral includes all the necessary documentation, including police records, and that the offender is available for evaluation. During the clinical screening, a clinician reviews the offender's file and determines whether the offender merits an evaluation. This screening is necessary because Corrections neither assesses whether an offender committed a predatory offense or is likely to re-offend, nor evaluates the nature of an offender's parole violation before it makes a referral.

Additionally, Mental Health implemented a streamlined process for addressing re-referred offenders. As directed in Mental Health's policy that was in effect between February 2008 and June 2010, Mental Health's case managers could decline to schedule clinical screenings for offenders whom Mental Health had previously screened or evaluated and determined did not meet SVP criteria if the case managers determined the offenders had not committed new crimes, sex-related parole violations, or any other offenses that might contribute to a change in their mental health diagnoses. The policy provided screening guidelines for staff to consider and examples of factors that demonstrated when a case did not warrant a clinical screening and for which Mental Health—after its administrative review—could notify Corrections that the offender did not meet SVP criteria.

Our analysis of Mental Health's data showed that between 2005 and 2010, Mental Health decided that half of the roughly 31,500 referrals did not warrant clinical screenings. Our review of six specific cases suggests that Mental Health followed its own policy and notified Corrections that the offenders did not meet SVP criteria when case managers determined that the nature of the parole violations would not change the outcomes of previous screenings or the evaluations of re-referred offenders. For example, in three of these cases, Mental Health's case managers noted that parole violations were not related to sexual behavior and would not change the most recent evaluations' results. These evaluations had concluded that each of these offenders lacked an important element of SVP criteria: a diagnosable mental disorder or the likelihood that the offender would engage in sexually violent criminal behavior. When we asked Mental Health why it had developed the policy allowing case managers to decide that some re-referred cases did not warrant clinical screenings, the program manager explained that clinical determinations are highly unlikely to alter if there are no new issues that are substantive or related to sexual offenses.

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Therefore, to streamline the already overburdened process, Mental Health believed it was within the law and in the public interest to conduct only administrative reviews for certain offenders. However, according to the program manager, Mental Health implemented a more in-depth review due to several high-profile sexual assault cases.

As explained previously, for a brief time Corrections and Mental Health had an agreement that they designed to eliminate unnecessary re-referrals. However, apparently in response to concerns from the former Governor's Office, Corrections stopped using this agreement. Although Mental Health could reinstitute its administrative review policy, we believe the better course of action is for Mental Health to work with Corrections to revise its current screening and referral process so that Corrections considers STATIC-99R scores, previous clinical screening and evaluation results, and the nature of any parole violations before referring cases to Mental Health. Moreover, our legal counsel believes that the law allows such a process. In light of the volume of referrals to Mental Health, such revisions to the screening and referral process would be a reasonable, responsible way to reduce the costs and duplicative efforts associated with these referrals.

Although Mental Health Did Not Always Assign the Required Number of Evaluators, It Properly Recommended Offenders to Designated Counsels When Warranted

Our review of 30 cases in which Mental Health completed evaluations of offenders found that Mental Health generally followed its processes for conducting evaluations and asked the designated counsels to request commitments when warranted. Mental Health based its requests to the designated counsels on its evaluators' thorough assessments, which included face-to-face interviews with offenders unless they declined to participate. The evaluators also conducted extensive record reviews and used evaluation procedures that applied industry standard diagnostic criteria to decide whether mental disorders were present and employed risk assessment tools to determine the offenders' risk of re-offending.

Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders.

Although Mental Health properly recommended that designated counsels request commitments when warranted, Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders. As the Introduction explains, state law requires Mental Health to designate two evaluators to evaluate offenders likely to be SVPs. When two evaluators disagree about whether an offender meets the criteria for the program, state law requires Mental Health to arrange for two additional evaluators

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We found that in 161 instances Mental Health arranged for only one initial evaluator—rather than the required two—to assess each offender before notifying Corrections that the offender did not meet SVP criteria.

to assess the offender. However, when we examined some case files and analyzed Mental Health's data for January 2005 through September 2010, we found that in 161 instances Mental Health arranged for only one initial evaluator to assess each offender before notifying Corrections that the offender did not meet SVP criteria. The data are also supported by our case file reviews, in which we found one instance where Mental Health notified Corrections that an offender did not meet SVP criteria based on a single evaluator's assessment, which found that the offender did not have a diagnosable mental disorder.

When we asked Mental Health about these 161 referrals, the program manager indicated that for a short time after the passage of Jessica's Law, Mental Health implemented a process stipulating that if the first evaluator determined that the offender did not have a diagnosable mental disorder, Mental Health did not refer the offender to a second evaluator. The program manager stated that the passage of Jessica's Law had not allowed Mental Health sufficient time to put in place the infrastructure and resources needed to respond to the magnitude of referrals it received from Corrections during the period that we reviewed. Mental Health acknowledged that this process, which it communicated to staff verbally, began in October 2006 and ended in June 2007, after it had obtained and trained a sufficient number of evaluators. The program manager provided a list of offenders and indicated that Corrections later re-referred 98 of the 161 offenders that had previously received only one evaluation. She indicated that Mental Health determined either during subsequent clinical screenings or during evaluations that these 98 offenders did not meet SVP criteria and that the remaining offenders have not been referred to Mental Health again.

We also found that Mental Health did not always assign two additional evaluators to resolve differences of opinion between the first two evaluators about referred offenders; however, we believe that this practice had no impact on public safety. Specifically, our analysis of Mental Health's data shows that in 254 closed referrals, Mental Health arranged for a third evaluator only and not for a fourth. According to e-mail correspondence provided by the program manager, for at least a year before August 2008, Mental Health's practice was to assign a fourth evaluator to a case only if a third evaluator concluded that the offender met SVP criteria. According to the program manager, the former chief of the program rescinded this practice in August 2008 after verbal consultation with the department's assistant chief counsel. E-mail correspondence from the former chief of the program to staff indicates that this practice did not comply with state law.

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From both a legal and budgetary perspective, we believe that the practice of obtaining a fourth evaluation only if a third evaluator concludes that the offender is an SVP is a practical way to manage the program. If the third evaluator believes the offender is not an SVP, state law generally would not allow Mental Health to recommend the offender for commitment even if the fourth evaluator concludes that the offender meets the necessary criteria. According to Mental Health's own analysis, the average cost of an evaluation completed by a contractor for fiscal year 2009–10 was $3,300; therefore, the department's avoiding unnecessary fourth evaluations could result in cost savings. Our legal counsel advised us that the law is open to interpretation on this issue. Thus, we suggest that Mental Health reinstitute this practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

We suggest that Mental Health reinstitute the practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

Mental Health Has Used Contractors to Perform Its Evaluations Due to Limited Success in Increasing Its Staff

Because it has made limited progress in hiring and training more staff, Mental Health has used contractors to complete the evaluations of sex offenders whom it has considered for the program. According to the program manager, the evaluation of sex offenders is a highly specialized field, and Mental Health believes it has not had staff with the skills and experience necessary to perform the evaluations. Mental Health reported to us that as a result, for fiscal years 2005–06 through 2009–10, it paid nearly $49 million to contractors who performed work related to its evaluations of offenders. Although current state law expressly authorizes Mental Health to use contractors for all types of evaluations, this permission will expire on January 1, 2012.[10] Because Mental Health has had difficulty in hiring staff, acquiring a sufficient work force to conduct its evaluations is likely to pose a significant challenge when the law expires.

In April 2007 an employee union requested that the State Personnel Board review Mental Health's evaluator contracts for compliance with the California Government Code, Section 19130(b), which allows contracting only when those contracts meet certain conditions, such as that state employees cannot perform the work. The State Personnel Board ruled against Mental Health, finding that Mental Health had not adequately demonstrated that state employees could not perform the tasks that it had assigned

[10] Although express permission for contractors to perform all types of evaluations expires on January 1, 2012, state law will continue to require that Mental Health use contractors to perform the difference-of-opinion evaluations. As the Introduction details, state law specifically mandates that these evaluators cannot be employees of the State.

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to contractors. Because of the ruling, the State Personnel Board disapproved Mental Health's contracts effective 90 days after its March 2008 decision.[11] In September 2008, to provide Mental Health with the capacity to perform the required evaluations, the Legislature amended state law to give the department express permission to use contractors for all types of evaluations until January 1, 2011. The Legislature later extended this authorization until January 1, 2012.[12]

According to the program manager, Mental Health believes that no current state employee position requires minimum qualifications sufficient to perform the function of the SVP evaluator. As evidenced by Mental Health's requirements for its contract evaluators, the department believes evaluators need specific experience in diagnosing the sexually violent population and at least eight hours of expert witness testimony related to SVP cases. Currently, as the program manager explained, Mental Health does not consider state-employed consulting psychologists qualified to perform evaluations, although it has provided two employees with additional training, mentoring, and experience to prepare them to perform evaluations. These two employees have completed three evaluations but have yet to provide expert witness testimony. The program manager also stated that Mental Health has had difficulty hiring consulting psychologists with qualifications similar to those of the contracted evaluators because the compensation for the consulting psychologist positions is not competitive with what is available to psychologists in private practice for this specialized area of forensic mental health clinical work. Mental Health completed a salary analysis in March 2010 that found that the average hourly pay for the contractors to perform evaluations and clinical screenings is approximately $124 per hour, compared to the $72 per hour—including benefits—that state-employed consulting psychologists earn.

Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff.

Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff. As Figure 5 indicates, from January 2005 through September 2010, Mental Health used between 46 and 77 contractors each year to complete its workload of evaluations and clinical screenings, while some or all of its seven positions for state-employed consulting psychologists were at times vacant. Mental Health reported to us that for fiscal years 2005–06 through 2009–10, it spent nearly $73 million on the contractors. This amount is equivalent

[11] The State Personnel Board's decision said that it is permissible for Mental Health to use contractors to perform difference-of-opinion evaluations.

[12] If the director of Mental Health notifies the Legislature and the Department of Finance that it has hired a sufficient number of state employees before this date, the express permission will end earlier than January 1, 2012.

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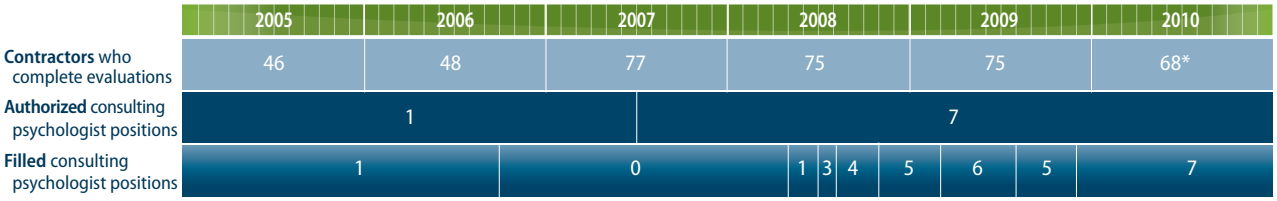
to an average of roughly $188,000 per year per contractor. By comparison, for fiscal year 2009–10, each consulting psychologist earned $110,000 (excluding benefits). The $73 million included payments for activities that the contractors performed separate from the initial screening and evaluation process, such as providing expert witness testimony in court and updating evaluations for offenders awaiting trial or already committed as SVPs. The amount also included approximately $49 million related to the evaluation of offenders whom Corrections referred to Mental Health. The reported estimate of costs for clinical screenings performed by contractors during the same period was almost $169,000.[13]

Figure 5
Number of Contractors and State-Employed Consulting Psychologists Used by the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database); summary of the number of authorized positions for the consulting psychologist classification and the number of employees filling those positions by year provided by the program manager of the Sex Offender Commitment Program.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* The data for 2010 contractors represents a partial year—January 2010 through September 2010.

To address the difficulty in hiring qualified evaluators as state employees, Mental Health is working to establish a new evaluator classification. The proposed position is a permanent-intermittent position—a state classification in which the employee works periodically or for a fluctuating portion of a full-time work schedule and is paid by the hour. Mental Health plans for these employees to work as its caseload requires. This proposed new classification offers a more competitive compensation than does the standard consulting psychologist position, so Mental Health believes that it will now attract more individuals as potential employees. The qualifications for the new classification are similar to the requirements placed on Mental Health's current contractors who perform evaluations. Mental Health anticipates that the State

[13] Contractors were paid $75 per clinical screening. This cost does not cover the screenings performed by the state-employed consulting psychologists.

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Personnel Board will consider its request for the new position classification in August 2011. If the State Personnel Board approves the classification, Mental Health plans initially to seek authority for 10 positions and then increase its positions by 10 in each subsequent fiscal year until eventually it can rely completely on employees to perform the evaluations. The only exceptions to Mental Health's reliance on state-employed evaluators will occur when it must use contractors to provide difference-of-opinion evaluations, as required by law. If it has not hired sufficient staff by 2012, the program manager stated that Mental Health plans to propose a legislative amendment to extend its authorization to use contractors.

Mental Health Has Not Reported to the Legislature About Its Efforts to Hire State Employees as Evaluators or About the Impact of Jessica's Law on the Program

Mental Health has not submitted required reports about its efforts to hire qualified state employees to conduct evaluations of potential SVPs and about the impact of Jessica's Law on the program. State law requires Mental Health to report semiannually to the Legislature on its progress in hiring qualified state employees to complete evaluations. Although the first of these reports was due by July 10, 2009, Mental Health has yet to submit any reports. In addition, state law required Mental Health to provide a report to the Legislature by January 2, 2010, on the effect of Jessica's Law on the program's costs and on the number of offenders evaluated and committed for treatment. However, Mental Health also failed to submit this report. In May 2011 Mental Health's external audit coordinator stated that the reports were under development or review. Mental Health did not explain why the reports were late or specify a time frame for the reports' completion.

The Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders and how profoundly Jessica's Law has affected Mental Health's workload.

Because Mental Health has not submitted the required reports, the Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders. The Legislature and other interested parties may also have been unaware of how profoundly Jessica's Law has affected Mental Health's workload. As a result, the Legislature may not have had the information necessary to provide appropriate oversight and to make informed decisions.

Recommendations

To enable it to track trends and streamline processes, Mental Health should expand the use of its database to capture more specific information about the offenders whom Corrections refers to it and the outcomes of the screenings and evaluations that it conducts.

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.
- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.
- Using STATIC-99R to assess the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier than nine months before offenders' scheduled release dates in order to meet its six-month statutory deadline.

To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets SVP criteria.

To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

EXHIBIT A
Page 37 of 44

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date: July 12, 2011

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

(Agency response provided as text only.)

California Department of Mental Health
1600 9th Street
Sacramento, CA 95814

June 21, 2011

Elaine M. Howle, CPA
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Mental Health (DMH) has prepared its response to the draft report entitled "Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work". The DMH appreciates the work performed by the Bureau of State Audits and the opportunity to respond to the draft report.

Please contact Vallery Walker, Internal Audits, at (916) 651-3880 if you have any questions.

Sincerely,

(Signed by: Cliff Allenby)

CLIFF ALLENBY
Acting Director

Enclosure

Response to the Bureau of State Audits
Draft Report Entitled

"Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work"

Recommendation: To enable it to track trends and streamline processes, the Department of Mental Health (Mental Health) should expand the use of its database to capture more specific information about the offenders the Department of Corrections and Rehabilitation (Corrections) refers to it and the outcomes of the screenings and evaluations it conducts.

Response: Mental Health has identified database enhancements that will enable the Sex Offender Commitment Program (SOCP) to track more specific information related to victims, offenders, offenses, screening results, evaluations results, referral decisions and actions taken by the District Attorneys and the courts. These changes will enable Mental Health to track trends and streamline processes.

Recommendation: To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determine whether the offender committed a predatory offense.
- Review the result of any previous screenings and evaluations Mental Health completed and consider whether the most recent parole violation or offense might alter the previous decision.
- Use the State Authorized Risk Assessment Tool for Sex Offenders to assess the risk that an offender will reoffend.

Response: Mental Health and Corrections are already working together to further streamline the referral process to eliminate duplicative effort and increase efficiency.

Recommendation: To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval of a new position classification for SVP evaluators. If the State Personnel Board (SPB) approves the classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

Response: Mental Health has submitted its SVP Evaluator classification proposal to the Department of Personnel Administration. It is anticipated that the SPB will hear the proposal in the month of August 2011. SOCP will immediately recruit SVP Evaluators once this classification is approved by SPB and position authority has been granted. SOCP Consulting Psychologists currently attend trainings on legal and clinical practices related to full evaluations and trends in the forensics field. Efforts to train consulting psychologists to conduct evaluations will continue.

In addition, Mental Health plans to propose legislative amendments to extend its authorization to use contractors for all types of evaluations prior to the expiration of its current authorization of January 1, 2012.

Recommendation: To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that, when resolving a difference of opinion between the first set of evaluators, Mental Health must only seek the opinion of a fourth evaluator when a third evaluator concludes that the offender meets the SVP criteria.

Response: Mental Health is evaluating options to reduce costs for unnecessary evaluations.

Recommendation: To ensure the Legislature can provide effective oversight, Mental Health should complete and submit reports to the Legislature on its efforts to hire state employees and on the impact of Jessica's Law on the program as soon a possible.

Response: The Administration is in the process of finalizing these reports.

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(Agency response provided as text only.)

California Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001

June 21, 2011

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Corrections and Rehabilitation (CDCR) is submitting this letter in response to the Bureau of State Audits' report (BSA) entitled ***Departments of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work.***

The Legislature created the Sex Offender Commitment Program to target sex offenders who present the highest risk to public safety due to their diagnosed mental disorders which predisposes them to engage in sexually violent criminal behavior. As such, CDCR is committed to adhering to the statutory law governing this program and will always err on the side of caution in regards to public safety when making sex offender referrals to the Department of Mental Health (DMH). CDCR appreciates the thoughtful review conducted by BSA and the concerns for duplicate work and potential savings for the state of California. CDCR notes the current screening process developed collaboratively by both departments provides the ability for the State to meet the intent of the Sexually Violent Predator statute in screening and identifying offenders without requiring duplicative mental health assessments by both departments, which would have a negative fiscal impact on the State. We agree that improvements can be made in streamlining the process and have already implemented steps to improve the timeliness of our referrals to DMH. We look forward to carefully reviewing the recommendations in this report and will continue our work with DMH to increase efficiency.

We would like to thank BSA for their work on this report and will address the specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

(Signed by: Scott Kernan)

SCOTT KERNAN
Undersecretary, Operations (A)

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

Declaration of Peter Finnerty

I, Peter F. Finnerty, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to such facts under oath. Where statements are made on information and belief, I believe these statements to be true.

2. I am employed as a Senior Deputy District Attorney by the Orange County District Attorney's Office ("OCDA"). I have worked as a deputy at the OCDA since July of 2005, and have been assigned to the Sexually Violent Predators ("SVP") unit since September of 2011. I am currently the most senior SVP prosecutor at the OCDA.

3. In an effort to provide the Commission on State Mandates with information regarding the frequency with which SVP commitment proceedings have been initiated in Orange County, both before and after the implementation of Jessica's Law, my office undertook a review of its files. Based upon this review, we determined that from January 1, 2000, through December 31, 2006, the OCDA filed 31 initial SVP commitment petitions. We also determined that from January 1, 2007, through December 31, 2018, the OCDA filed 41initial SVP commitment proceedings. Therefore, from 2000 through 2006, the OCDA filed an average of 4.43 SVP petitions per year and from 2007 through 2018, the OCDA filed an annual average of 3.42 SVP petitions per year.

4. The OCDA does not separately track the number of referrals we receive each year from the Department of State Hospitals ("DSH"). However, in my experience, the number of referrals tends to broadly correspond to the number of SVP petitions that

we file. For example, since I joined the OCDA SVP Unit in September, 2011, every referral received from DSH has been filed as an SVP petition by the OCDA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 10th day of April, 2019, in Santa Ana, California.

Peter F. Finnerty
Senior Deputy District Attorney

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

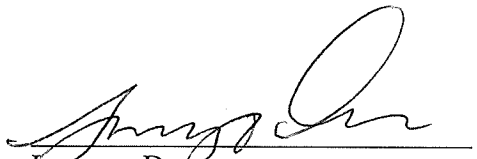
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



Lorenzo Duran
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/5/19

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

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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April 10, 2019

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Re: Comments Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego, et al., v. Commission on State Mandates, et al.* (2018) 6 Cal.5th 196

Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statues 1995, Chapter 762, Statutes 1995, Chapter 763,
Statutes 1996, Chapter 4, Department of Finance, Requester

Dear Ms. Halsey:

The County of Sacramento responds to the Commission's request for comments dated February 8, 2019. The Commission requested that all parties brief whether the expanded Sexually Violent Predator ("SVP") definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. The Commission also requested that all parties comment on how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments. These questions, of course, arise from *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, where the Supreme Court found that the Commission's decision was incorrectly decided and directed the Commission to determine whether Proposition 83 might have had an effect on the mandate more broadly, as a result of the expanded definition of an SVP.

Proposition 83, known as Jessica's Law, was adopted by the voters in 2006. The Proposition expanded the definition of sexually violent predator by reducing the required number of victims from two or more to one or more. (Welf. & Inst. Code § 6600(a)(1).) The Proposition also eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction. (Welf. & Inst. Code § 6600(g).) The Department of Finance in their comments contends that the Proposition also expanded the set of crimes that qualify as a sexually violent offense. (Welf. &

Inst. Code § 6600(b).) But those changes were signed into law by the Governor on September 20, 2006 through Senate Bill 1128, not through Jessica's Law.

The issue of whether the expanded SVP definition transformed the statutes into a voter-imposed mandate was briefed extensively before the Commission in 2013, as well as in the trial court, Court of Appeal and Supreme Court. In short, the reimbursable activities have not changed since Jessica's Law was adopted by the voters. Proposition 83 made minor and immaterial amendments to two subdivisions in two of the Test Claim Statutes. As a result, article IV, section 9 of the California Constitution required that these statutes be reinstated in their entirety. (*American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748.) The constitutionally compelled reenactment of the unaltered Test Claim Statutes cannot be construed as a decision by the voters to impose duties that the ballot measure did not add or amend. For further discussion on this point, please see the Sacramento County District Attorney Comments dated and filed with the Commission on March 26, 2013, as well as the comments filed by the County of San Diego on March 27, 2013.

The primary issue now before the Commission is whether the expanded definition imposed new duties on the counties by increasing the number of referrals. Note that the Department of Finance in their March 22, 2019 comments failed to provide evidence as to this issue and has not met its initial burden of proof. In its February 8, 2019 request for comments, the Commission advised that the Commission's ultimate findings of fact must be supported by substantial evidence in the record.

Statistics clearly establish that since the passage of Jessica's Law, the number of referrals has actually decreased state-wide. The report published in July 2011 by the California State Auditor on the Sex Offender Commitment Program (Report 2010-116), shows that right after the passage of Jessica's Law, the number of evaluations by Mental Health increased but, despite the increased number of evaluations, Mental Health recommended to the district attorneys or county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. (Audit Report, p. 15.) The number of referrals continued to decrease in 2010, the last year addressed by the Audit Report. In 2005, 46 designated counsel petitions were filed. That number increased to 88, 169 and 92 in 2006, 2007 and 2008 respectively, but then dropped off to 52 in 2009 and only 23 in 2010, only half the number of filings from 2005 before Jessica's Law was passed. (Audit Report, p. 14.) As the Audit Report found:

> By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism. (*Id.*)

The Audit Report further concluded that "crimes added under Jessica's Law as sexually violent offenses correlate less with the likelihood that offenders who commit such crimes are SVPs than do the crimes designated in the original Sexually Violent Predator Act." (*Ibid.*)

Sacramento County's statistics are similar to state-wide statistics. In 2005, pre-Jessica's Law, there were four petitions filed, all with multiple victims. In 2007, post-Jessica's Law, there were 12 petitions filed, all with multiple victims. In 2008, 18 petitions were filed, all with multiple victims. Since then, the total number of petitions filed has steadily dropped, and there have never been more than three single-victim petitions filed in a year. The District Attorney has located at least four referrals for which a petition was not filed, and several that were dismissed either prior to or shortly after the probable cause hearing. (See Declaration of Brian Morgan, attached hereto.) Regardless, the change in law did not increase the number of referrals to Sacramento County and in fact appears to have greatly reduced the number of referrals and certainly the number of petitions filed.

I declare under penalty of perjury that the foregoing, signed on April 10, 2019, is true and correct to the best of my personal knowledge, information or belief.

Sincerely,
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Sacramento Interim County Counsel

By: Krista C. Whitman
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Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statues 1995, Chapter 762, Statutes 1995, Chapter 763,
Statutes 1996, Chapter 4
Department of Finance, Requester

I, Brian Morgan, declare as follows:

1. I am employed as a Supervising Deputy District Attorney for the Sacramento County District Attorney's Office, Mental Health Litigation Unit. I have personal knowledge of the matters stated herein, and if called as a witness could and would testify competently thereto.

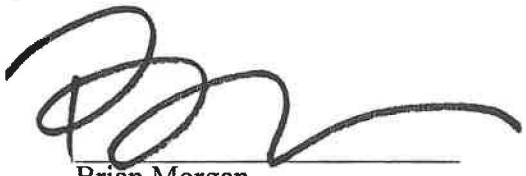
2. At the request of the County Counsel's Office, I researched the District Attorney's files from 2005 to the present, to determine how many SVP filings our Office made for each year and of those filings, how many were multiple victim and how many were single victim. The research required pulling each individual file in an attempt to recreate the data, and thus is as accurate as the review of available records allowed. The numbers are presented in the chart below.

YEAR FILED	More than 1 victim	Single victim
2005	4	0
2006	19	0
2007	12	0
2008	18	0
2009	5	2
2010	4	0
2011	5	2
2012	2	1
2013	7	1
2014	3	1
2015	4	1
2016	4	2
2017	3	1
2018	2	3
2019	0	1

3. I located at least four referrals where petitions were not filed, and several cases that were dismissed either prior to or shortly after the probable cause hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2019, in Sacramento, California.



Brian Morgan

1630908.docx

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

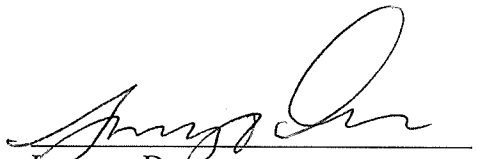
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



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Last Updated: 4/5/19

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

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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April 10, 2019 **Via Drop Box**

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RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to County of San Diego, et al. v. Commission on State Mandates, et al. (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The County of San Bernardino hereby responds to the above-referenced proceeding on remand as set forth in your letter of February 8, 2019. The County of San Bernardino joins and incorporates the comments submitted by the Counties of San Diego, Los Angeles, Sacramento, and Orange. In your letter, the Commission requests "all parties, interested parties, and interested persons receiving this letter" to comment on the following issues:

> "Whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."
>
> "[H]ow, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."

As a preliminary matter, the County of San Bernardino objects to the Commission's request for comments at this time. The issue of whether the expanded definition of a sexually violent predator

(SVP) in Proposition 83 adopted by the voters in 2006 changes the State's duty to reimburse the counties and if so, how it changes those duties, has not been previously considered by the Commission. The Commission should therefore handle these questions as it would any other similar request in the first instance – as a request for mandate redetermination. The Department of Finance (DOF) should provide its legal and factual basis for its redetermination request. The submission by the DOF on March 22, 2019 does not set forth any facts to support the request for redetermination and ignores the information in the possession of the State that indicate that Proposition 83 did not substantially change the mandates under SVP statutes. Only after DOF has met this burden should interested parties be required to submit comments. Since the DOF has not set forth a factual basis for seeking redetermination, the County of San Bernardino hereby reserves the right to submit further data regarding specific SVP cases, should the Commission find that DOF has met its initial burden.

1. <u>The expanded SVP definition did not transfer the test claim statute into a voter imposed mandate or impose new, additional duties on the Counties.</u>

The enactment of Proposition 83 modified the SVP criteria by decreasing the number of victims from two to one. However, this change is de minimis when compared to the overall SVP program and did not did not relieve the counties of their preexisting state mandated activities per Welfare and Institutions Code section 6001 through 6604. This is further supported by the comments previously submitted by the County of Los Angeles on March 26, 2013, and the County of San Diego on March 27, 2013, which set forth the specific duties under the SVP statutes and the de minimis, if any, change to local government duties pursuant to Proposition 83.

The impact of Proposition 83 is not a new subject for the state and has been examined and analyzed thoroughly in a 2010 State Auditor report prepared for the California Governor and state legislators.

In its report, the State Auditor indicated that "despite the increased number of referrals, as of September 2010, the relative percentage of offenders whom the courts committed as SVPs declined each year after the first full year that Jessica's Law was in effect." The report noted that despite "the passage of Jessica's Law in 2006 resulted in significantly more sex offenders (offenders) becoming potentially eligible for commitment as sexually violent predators (SVPs) under the Sex Offender Commitment Program (program). However, the courts have committed very few of the thousands of offenders whom the Department of Corrections and Rehabilitation (Corrections) referred to the Department of Mental Health (Mental Health) for evaluation."

"Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism."

The likely reason for the lack of any significant statistical increase in SVP filings is because the offender is still required to be diagnosed with a mental disorder and such diagnoses require demonstration of a pattern of behaviors, fantasies or urges that have occurred for at least six months, which would be difficult to obtain in a case with a single victim. Pursuant to WIC 6600, a "Sexually Violent Predator" is a person who has been convicted of a sexually violent offense against one 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 predatory behavior. A "diagnosed mental disorder" is defined in the statute as "A congenital or acquired condition affecting the emotional or volitional capacity that pre-disposes the person to the commission of criminal sexual acts." The final criteria is that it must be determined that the individual's diagnosed mental disorder makes it likely that he or she will engage in sexually violent predatory behavior if released into the community.

2. The expanded definition in Proposition 83 had no discernable long term effect on the number of SVP filings in San Bernardino County.

Similar to the statewide data trend discussed in the State Audit, San Bernardino County has experienced a general decline in SVP filings year over year since the passage of Jessica's Law. The data available at this time ranges from 2002 to 2018 and indicates that prior to Jessica's Law, 2002 to 2006, the average number of SVP filings countywide was 9.2 per year. After Jessica's Law passed, 2007 to 2018, the average number of SVP filings countywide was 6 per year.

The Commission previously found that the original SVP statutes required the performance of eight specific duties by local governments and that those activities were reimbursable by the State. None of these duties changed due to the passage of Proposition 83. As such, the mandate from the State remains in effect and the request for redetermination by the DOF should be denied.

I declare under penalty of perjury that the foregoing, signed April 10, 2019, is true and correct to the best of my personal knowledge, information and belief.

Very Truly Yours,

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#21S1587

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

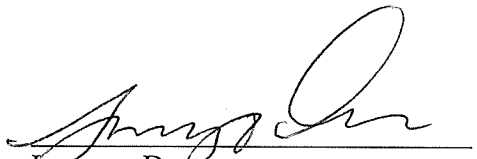
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/5/19

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

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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EXHIBIT K

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RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego, et al. v. Commission on State Mandates, et al.* (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statues 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The County of San Diego, on behalf of the San Diego County Office of the Public Defender, the San Diego District Attorney's Office and the San Diego County Sheriff (collectively referred to as the "County"), hereby submits the following comments in response to the Commission's February 8, 2019 letter.

The Supreme Court directed the court of appeal to remand this matter to the Commission to "determine, *in the first instance*, whether and how the expanded definition of a sexually violent predator (SVP) may affect the state's obligation to reimburse the Counties for implementing the amended statute."[1] By "expanded definition" the Supreme Court referred to the modifications Proposition 83 made to

[1] *County of San Diego et al. v. Commission on State Mandates, et al.*, 6 Cal. 5th 196, 201 (2018) (emphasis added).

Welfare and Institutions Code § 6600, subdivisions (a)(1) and (g).[2] These changes reduced the number of victims needed to qualify an individual as an SVP from two victims to one, and removed the limitation that only one prior juvenile adjudication of a sexually violent offense could be used as a qualifying conviction.[3]

Whether the "expanded definition" of SVP in Proposition 83 changes the State's duty to reimburse the counties, and if so, how it changes those duties, are questions not previously considered by the Commission.[4] The Supreme Court recognized the current record lacks information to answer these questions:

> Unfortunately, the Commission never considered whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. Its ruling granting the State respondents' request for mandate redetermination instead rested entirely on grounds that we now disapprove. Moreover, the parties admit—and the Court of Appeal found—that the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments.[5]

The Commission should therefore handle these questions as it would any other similar request in the first instance – as a request for mandate redetermination under Government Code §17570.

The Department of Finance (DOF) Has Failed to Meet Its Burden to Demonstrate the Expanded Definition of Sexually Violent Predator Constitutes a Subsequent Change in Law that Modifies the State's Obligation to Reimburse Counties Under the Test Claim Statutes

Government Code §17570(b) states: "[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 the test claim decision . . . has been modified based on a subsequent change in law."[6] In order to prevail, the moving party must provide "[a]

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[2] *Id.* at 205, fn. 2.

[3] *Id.* The DOF contends that the Proposition also expanded the set of crimes that qualify as a sexually violent offense. (Welf. & Inst. Code § 6600(b).) But those changes were signed into law by the Governor on September 20, 2006 through Senate Bill 1128, not through Jessica's Law.

[4] *County of San Diego v. Commission on State Mandates*, 6 Cal. 5th at 205, 217.

[5] *Id.* at 217.

[6] *See also*, 2 C.C.R. §1190.1(a).

detailed analysis of how and why the state's liability for mandate reimbursement has been modified . . . based on a subsequent change in law."[7] The detailed analysis must be signed under penalty of perjury[8] and "requires more than a written narrative or simple statement of the facts and law. It requires the application of the law [...] to the facts (i.e. the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for the activity has been modified."[9]

The question presented in the DOF's 2013 request – whether the *reenactment* of SVPA provisions in Proposition 83 constituted a "subsequent change in law" as defined in Government Code section 17570 – was resolved by the Supreme Court in 2018. The Court found: "[the] "ruling granting the State respondents' request for mandate redetermination . . . rested *entirely* on grounds we now disapprove."[10] Because the Supreme Court rejected the only basis asserted by the DOF in its request for redetermination, its pending request is facially deficient. Accordingly, the DOF, as an initial matter, should be required to provide a "detailed analysis of how and why" a mandate redetermination is appropriate.

The DOF's March 22, 2019 submission falls woefully short of providing the required detailed analysis. Rather, the DOF's position can be summarized as follows:

(1) Prop 83 expanded the definition of SVP.[11]
(2) Costs to local jurisdictions flow from the definition of SVP because local jurisdictions won't incur costs for carrying out the SVPA process unless state officials determine the offender meets the definition of SVP.[12]
(3) Because the costs "flow" from the definition – "the question of whether the State must reimburse turns on whether or not the Legislature is the source of that definition. Before Proposition 83, it was. After Proposition 83, the voters are the source of the expanded definition of 'sexually violent predator.'" [13]
(4) Because "[t]he Legislature can no longer repeal or narrow that definition through normal legislative process. . .the State is no longer financially responsible for reimbursing such costs."[14]

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[7] Gov't Code §17570(d)((1)(B). See also, 2 C.C.R. §1190.1(b).
[8] Gov't Code §17570(d)(1)(E).
[9] 2 C.C.R. §1190.1(c).
[10] *County of San Diego et al. v. Commission on State Mandates, et al.*, 6 Cal. 5th at 217. (Italics added.)
[11] DOF March 22, 2019 letter ("3/22/19 letter") at p. 1, ¶ 4.
[12] *Id.* at p. 2, ¶¶ 4-5.
[13] *Id.* at p. 2, ¶ 5.
[14] *Id.*

The DOF's first two points don't offer the Commission anything new. The Supreme Court itself recognized "whether a county has a duty to act (and, if so, what it must do) depends on the SVP definition."[15]

The DOF's third point is a conclusion that is unsupported by any factual analysis. The Supreme Court ordered this matter be remanded to the Commission to "determine, *in the first instance*, whether and how the expanded definition of a sexually violent predator (SVP) may affect the state's obligation to reimburse the Counties for implementing the amended statute."[16] At the heart of this analysis, as explained by the Supreme Court, is the question of "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."[17] Instead of answering this question with factual data, however, the DOF, in its March 22, 2019 letter, simply argues that the actual numbers are irrelevant:

> "Regardless of the number of offenders processed by local governments in a particular year, it is not disputed that the voters expanded the category of offenders who 'shall' be referred to local governments as part of the SVPA process when they adopted Proposition 83 and altered the definition of 'sexually violent predator."

The DOF's position ignores the fact that a referral is only made if, in addition to existence of the requisite predicate sexually violent offense, the State determines the offender has a diagnosed mental disorder that makes it likely that he or she will engage in sexually violent criminal behavior.[18] So, while *in theory*, the expanded definition could result in more referrals, as further discussed below, the actual facts presented in the State's own audit demonstrates that, *in reality*, the "expanded definition" has not resulted in a sustained number of higher referrals being made to local governments.

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[15] *County of San Diego et al. v. Commission on State Mandates, et al.*, 6 Cal. 5th at 216-17.

[16] *Id.* at 201 (emphasis added).

[17] *Id.* at 217.

[18] Both before and after the adoption of Proposition 83, before an individual can be found to be a sexually violent predator there must also be a finding that the individual "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 criminal behavior." Welf. & Inst. Code § 6600(a)(1). The requisite "diagnosed mental disorder" includes any condition, congenital or acquired, "affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." Welf. & Inst. Code § 6600(c).

The State's own audit indicates that the "expanded definition" of SVP has had, at most, a nominal effect on the number of referrals to counties, and thus it can't be said that the definitional changes so altered the duties imposed on local governments that the source of all those duties now derives from the voters as opposed to the Legislature. Additionally, as noted by the Sacramento County District Attorney's Office in its March 26, 2013 letter to the Commission: "The legislature chose to have these civil proceedings handled by the local entities. It can remove that requirement from the local entities if it so chooses. . ." The fact that there may be limits on the Legislature's ability to narrow the definition of an SVP in a manner that is inconsistent with Proposition 83 is of no moment.

The Changes to the Definition of Sexually Violent Predator in Proposition 83 Did Not Affect the State's Obligation to Reimburse Counties

A. The Changes to the Definition of SVP Did Not Result In a Greater Number of Referrals To Local Designated Counsel[19]

In July 2011, the California State Auditor issued a report on its audit of the "Sex Offender Commitment Program."[20] The Report concluded that while there was a dramatic increase in the number of referrals from the Department of Corrections ("Corrections") to the state Department of Mental Health ("Mental Health") after Senate Bill 1128 became law and the voters passed Prop. 83, there was only a brief uptick in the number of referrals to local designated counsel in 2006 through 2008, after which the number of referrals dropped to the pre-Proposition 83 levels.[21] Specifically, the Report found that "despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law."[22]

The Report also included the following finding:

> Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have

[19] "Designated Counsel" is "either the district attorney or the county counsel" as designated by the board of supervisors of each county. Welf. & Inst. Code § 6601(i).

[20] The *Sex Offender Commitment Program*, July 2011 Report 2010-116 ("2011 Audit Report") may be found at https://www.bsa.ca.gov/pdfs/reports/2010-116.pdf

[21] 2011 Audit Report, p. 14, Table 3.

[22] *Id.* at p. 15.

> unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism.[23]

Because the DOF declined to provide any factual data regarding the number of referrals to local designated counsel, the County has requested this data from the Department of State Hospitals for the years 1996 through 2018 for the County of San Diego and Statewide. Additionally, the County is in the process of collecting and analyzing data related to its SVP cases for presentation to the Commission. Since the DOF has not set forth a factual basis for seeking redetermination, the County hereby reserves the right to submit further data should the Commission find that DOF has met its initial burden.

B. The Changes to the Definition of SVP Did Not Transform the Test Claim Statutes into a Voter Imposed Mandate

As noted by the Supreme Court, it is undisputed that "nothing in Proposition 83 focused on duties local governments were already performing under the SVPA."[24] "No provision amended those duties in any substantive way. Nor did any aspect of the initiative's structure or other indicia of its purpose suggest that the listed duties merited special protection from alternation by the Legislature."[25] The SVP program, and the duties it imposes on local governments, would have remained in place whether or not Proposition 83 had been approved by the voters. Thus Proposition 83 could only be said to have "transformed" these duties from obligations imposed by the State to obligations imposed by the voters, if the definitional changes to SVP fundamentally changed the operation of the SVP program as it pertains to local governments. This is not the case. As noted above, the available factual data indicates Proposition 83 has had little effect on referrals to local governments.

To the extent there exists a small population of offenders who would not have otherwise been eligible for commitment under the SVPA but for Jessica's Law, the County contends the added costs incurred by the County in fulfilling its duties with respect to these offenders should nonetheless be reimbursed as part of the SVP program

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[23] *Id.*

[24] *County of San Diego et al. v. Commission on State Mandates, et al.*, 6 Cal. 5th at 213. (Italics added.)

[25] *Id.*

established by the Legislature.[26] As noted in the California District Attorney's Association's March 19, 2013 letter to the Commission: "It is the mandate to represent that was created in the original legislation and remains unchanged in Proposition 83…The legal representation is necessary to implement the original and continuing Sexually Violent Predator Act passed by the legislature, not to specifically implement Proposition 83."

I declare under penalty of perjury that the foregoing, signed on April 10, 2019, is true and correct to the best of my personal knowledge, information or belief.

Respectfully Submitted,

THOMAS E. MONTGOMERY, County Counsel

By
STEPHANIE A. KARNAVAS, Senior Deputy

14-90097

[26] The County refers the Commission to the California Public Defender's Association March 18, 2013 letter to the Commission and incorporates the arguments therein by reference, particularly that which demonstrates Proposition 83 did not effectuate a subsequent change in law as contemplated by Government Code section 17570.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

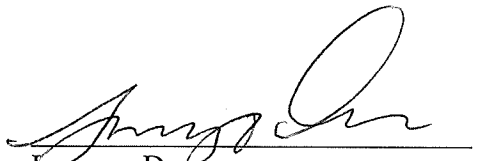
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



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Matter: Sexually Violent Predators

Requester: Department of Finance

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April 5, 2019

RE: REQUEST FOR COMMENT SEXUALLY VIOLENT PREDATORS (CSM-4509)
12-MR-01-R

Dear Ms. Halsey,

The Commission on State Mandates (Commission) has requested comment and legal argument relating to reconsideration of the request for mandate determination on remand, pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal. 5th 196.

A specific request has been made for briefing on "whether the expanded SVP definition in Proposition 83 transformed the test claims statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."

Additional comment is sought on "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local government."

The passage of Proposition 83 did not transform the test claims statutes into a voter-imposed mandate. Proposition 83 increased the number of potential sexually violent predators by reducing the number of victims to "one or more" from "two or more." (Welf. and Inst. Code, § 6600, subd. (a)(1). It also removed the limitation of only a single prior juvenile adjudication of a sexually violent offense as a prior conviction for SVP purposes. (Welf. and Inst. Code, § 6600, subd. (g)). However, these changes did not alter the duties imposed upon the counties in conducting SVP proceedings. None of the duties identified by the California Commission on State Mandates as duties 1, 2, 3, 5, 6, and part of 8,[1] were altered by Proposition 83. The role of the county in each of these duties remained unchanged. "[N]othing in Proposition 83 focused on

[1] (Cal. Com. on State Mandates, Statement of Decision No. CSM-4509 (June 25, 1998) p. 12 <https://csm.ca.gov/matters/4509/doc1.pdf> [as of Nov. 15, 2018]):

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duties local governments were already performing under the SVPA. No provision amended those duties in any substantive way." *County of San Diego v. Commission on State Mandates* (2018) 6 Cal. 5th 196, 213. The expanded definition in Proposition 83 did not alter the Counties duties, merely the number of possible case in which the County would be required to fulfil its preexisting duties.

The expanded definition did create a potential of the incremental increase in the performance of these duties by increasing the number of potential SVPs. However, the mere possibility of an increase is not synonymous with an actual increase. It is indisputable that as a result of Proposition 83 more individuals are being screened for Sexually Violent Predator Purposes. However, this burden is borne by the California Department of Correction, Board of Parole Hearings, and the Department of State Hospitals. The attached flowchart, from the Department of State Hospitals 2019-2020 Governor's Budget Proposals and Estimates, provides an overview of the SVP process. (Attachment 1). These state, not county, entities conduct multiple levels of screening. Only when two state evaluators agree that an individual meets SVP criteria, is a case referred to the County for consideration of filing a petition.[2] The vast majority of cases considered by the Department of State Hospitals are not referred to the DA for the filing of an SVP petition. Attachment 2 is a chart from the Department of State Hospitals website, showing that as of May 31, 2005, a total of 5,962 individuals had been referred to the Department of State Hospitals. Of those, 1,260 (21.2%) were referred to the District Attorney for the filing of an SVP petition. Attachment 3 is information previously obtained from the Department of State Hospitals pursuant to a Public Records Act inquiry. It shows that in 2016 and 2017, 4,032 individuals made it through the preliminary screenings and were referred to the Department of State Hospitals. Of these, only 104 (2.57%) were referred to DA offices for filing.[3] This low number may be the result of the requirement that to be an SVP, an individual must suffer from a "diagnosed mental disorder." Virtually all such individuals with a paraphilic disorder (sexual deviancy) suffer from either "pedophilic disorder" or "other specified paraphilic disorder, non-consent." Such diagnoses are made using diagnostic criteria found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The diagnostic criteria require, *inter alia*, that "Over a period of at least 6 months" the individual have "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors" involving their deviant sexual interest. To establish the presence of such interest for a period of at least 6 months, typically more than a single sexual conviction is required, thereby eliminating most of the individuals embraced by the expanded definition found in Proposition 83.

The elimination of most possible SVPs by the state agencies addresses the second matter for which comment is sought on "how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local government." In Los Angeles County, the number of cases referred to the Los Angeles County District Attorney's Office for the filing of SVP cases is as follows:

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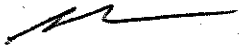
[2] There are rare instances when one doctor is positive and one is negative where the matter is submitted to the county to see if they wish to proceed with filing a petition, based upon their finding that the evaluations contain material legal error. Not all cases where the evaluators reach different opinions are submitted for consideration of material legal error.

[3] I have served a Public Record Act request upon the Department of State Hospitals for how many cases were submitted for the filing of Sexually Violent Predator (SVP) petitions statewide each year from 1985 through December 31, 2018. No response has been received. Compliance with the request is under "in progress" by the Department of State Hospitals.

1996 - 74 referrals
1997 - 42 referrals
1998 - 19 referrals
1999 - 16 referrals
2000 - 32 referrals
2001 - 30 referrals
2002 - 29 referrals
2003 - 36 referrals
2004 - 31 referrals
2005 - 30 referrals
2006 - 23 referrals
2007 - 46 referrals
2008 - 44 referrals
2009 - 22 referrals
2010 - 31 referrals
2011 - 45 referrals
2012 - 21 referrals
2013 - 11 referrals
2014 - 5 referrals
2015 - 16 referrals
2016 - 15 referrals
2017 - 12 referrals
2018 - 14 referrals

Thus, it is apparent that there is no discernable increase in the number of cases submitted for the filing of SVP petitions. This further supports the thesis that Proposition 83 did not transform the test claims statutes as a whole into a voter-imposed mandate, but, at most, the expanded definition incrementally imposed additional duties on the Counties.

Respectfully yours,



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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

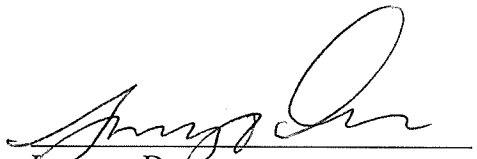
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
Department of Finance, Requester

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 April 11, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/5/19

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

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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June 12, 2019
Commission on State Mandates

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June 12, 2019

Via Drop Box

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Executive Director
Commission on State Mandates
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RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego, et al. v. Commission on State Mandates, et al.* (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statues 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The County of San Diego ("County") submitted a public records request to the Department of State Hospitals ("DSH") for the following information:

1. From January 1, 1996 to December 31, 2018, please provide the number of referrals (or records sufficient to show such data), delineated by year, the Department of State Hospitals sent to all counties for civil commitment proceedings under Welfare and Institutions Code section 6601.

2. From January 1, 1996 to December 31, 2018, please provide the number of referrals (or records of sufficient to show such data), delineated by year, the Department of State Hospitals sent to the District Attorney's Office for the County of San Diego for civil commitment proceedings under Welfare and Institutions Code section 6601.

Attached hereto as Exhibit A is a true and correct copy of the document produced by DSH in response to the County's request (the "Referral Summary") and the email message that accompanied production of that record.

In keeping with the declining trend of referrals discussed in the 2010 State Auditor Report, the Referral Summary demonstrates that the passage of Jessica's Law has not resulted in a sustained increase in the number of commitment referrals to local governments. To the contrary, the Referral Summary indicates that in the last 7 of the 12 years since Jessica's Law went into effect, the number of referrals to local jurisdictions has remained below 59 –the lowest number of referrals made in a single year prior to the enactment of Jessica's Law. Likewise the Referral Summary shows that the State made 1,355 referrals to local jurisdictions in the 11 years prior to the implementation of Jessica's Law (1996-2006), but only 908 referrals in the 12 years post implementation (2007-2018). The data specific to the County tells a similar story—referrals are declining.

In short, the State's own data, as reflected in the Referral Summary, demonstrates the "expanded" sexually violent predator definition in Proposition 83 did not have an appreciable effect on the number of referrals to local governments.

I declare under penalty of perjury that the foregoing, signed on June 12, 2019, is true and correct to the best of my personal knowledge, information or belief.

Respectfully Submitted,

THOMAS E. MONTGOMERY, County Counsel

By
STEPHANIE A. KARNAVAS, Senior Deputy

14-90097

EXHIBIT A

FORENSIC SERVICES DIVISION
1600 Ninth Street, Room 410
Sacramento, CA 95814
www.dsh.ca.gov

PRA R190097

Monday, May 06, 2019

Part 1

County	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Grand Total
Grand Total	**296**	**206**	**124**	**107**	**99**	**101**	**127**	**105**	**71**	**59**	**60**	**179**	**112**	**78**	**88**	**139**	**54**	**40**	**32**	**48**	**49**	**47**	**42**	**2263**

Part 2

County	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
San Diego	27	29	12	10	11	17	10	10	5	5	9	12	5	2	9	8	6	1	5	2	1	3	2	201

*Criteria is based on DA referral date

EXHIBIT A

R190097-041019 - Public Records Request

Message History (8)

On 5/17/2019 11:20:10 AM, CALIFORNIADSH Support wrote:

Subject: [Records Center] Public Records Request :: R190097-041019
Body:
RE: Public Records Act Request Number: R190097-041019

Dear Ms. Karnavas:

The Department of State Hospitals received your Public Records Act (PRA) request, for:

> Request amended on May 1, 2019:
>
> *1. From January 1, 1996 to December 31, 2018, please provide the number of referrals (or records sufficient to show such data), delineated by year, the Department of State Hospitals sent to all counties for civil commitment proceedings under Welfare and Institutions Code section 6601.*
>
> *2. From January 1, 1996 to December 31, 2018, please provide the number of referrals (or records of sufficient to show such data), delineated by year, the Department of State Hospitals sent to the District Attorney's Office for the County of San Diego for civil commitment proceedings under Welfare and Institutions Code section 6601.*

Please find your records under the PRA and all applicable laws that are disclosable available in the online portal.

Sincerely,

Records Coordination Unit

For CHRISTINE M. CICCOTTI
Deputy Director/Chief Counsel

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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.

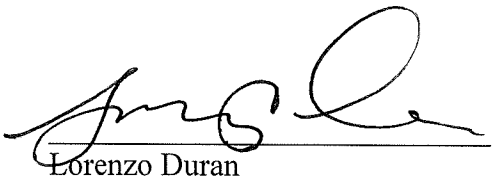
On June 13, 2019, I served the:

- **County of San Diego's Late Comments on the Mandate Redetermination on Remand filed June 12, 2019**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Welfare and Institutions Code Sections 6601 through 6608
  Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
  Department of Finance, Requester

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 June 13, 2019 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/12/19

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

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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EXHIBIT N

STATE *of* CALIFORNIA
COMMISSION ON STATE MANDATES

January 31, 2020

Ms. Erika Li
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Draft Proposed Denial of a New Test Claim Decision, Schedule for Comments, and Notice of Hearing

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12-MR-01-R
Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196; Judgment and Writ of Mandate Issued by Superior Court for the County of San Diego, Case No. 37-2014-00005050-CU-WM-CTL; Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)
As Alleged to be Modified by: Proposition 83, General Election, November 7, 2006
Department of Finance, Requester

The Draft Proposed Denial of a New Test Claim Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **February 21, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 27, 2020** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Denial of a New Test Claim Decision will be issued on or about March 13, 2020.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

ITEM ___

RECONSIDERATION OF THE REQUEST FOR MANDATE REDETERMINATION ON REMAND

DRAFT PROPOSED DENIAL OF A NEW TEST CLAIM DECISION

Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196; Judgment and Writ of Mandate Issued by Superior Court for the County of San Diego, Case No. 37-2014-00005050-CU-WM-CTL

Notice of Entry of Judgment and Writ of Mandate Remanding the Matter for Reconsideration Served June 5, 2019.

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)

Sexually Violent Predators (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election, November 7, 2006

12-MR-01-R

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

The Department of Finance (Finance) requests the Commission on State Mandates (Commission) adopt a New Test Claim Decision to end the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *Sexually Violent Predators*, CSM-4509 mandate. Specifically, Finance alleges that the 2006 voter-approved ballot initiative, Proposition 83 (titled "The Sexual Predator Punishment and Control Act: Jessica's Law") constitutes a subsequent change in law as defined by Government Code 17570 that ends the state's liability for this program. On December 6, 2013, the Commission adopted a New Test Claim Decision, finding that several activities formerly mandated by the state on counties to ensure the civil commitment of sexually violent predators were expressly included in or necessary to implement Proposition 83 pursuant to Government Code section 17556(f), and that counties were no longer entitled to reimbursement from the State for those activities pursuant to Government Code section 17570, effective July 1, 2011.

The California Supreme Court rejected the Commission's reasoning and findings, specifically finding on this issue of first impression that "not every single word printed in the body of an initiative falls within the scope of the statutory terms 'expressly included in ... a ballot

measure.'"[1] Rather, the court found, "[d]iscerning the extent of the state's obligation to reimburse local governments for existing state mandates in the wake of a voter-approved initiative that includes the text of a previously enacted law — and the Legislature's power to amend any of its provisions — takes a more nuanced analysis."[2] Therefore, the Court directed the Commission to set aside its decisions on 12-MR-01 and reconsider its New Test Claim Decision in accordance with the Court's judgment and writ.

This matter is now on remand from the Court to determine "whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."[3] With regard to the State's argument, first raised on appeal, that "the specified local government duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform any duties for this class of offenders until the voters by initiative expanded the definition of an SVP,"[4] the Court also found that "the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."[5] In making that finding, the Court specifically cited to the underlying appellate decision[6] and suggested that it be compared with ("cf.") the *San Diego Unified* decision[7] which found that "additional state statutory protections that were "incidental" to federal due process requirements, "producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c)."[8]

For the reasons discussed below, staff recommends that the Commission deny the Request for a New Mandate Decision.

Procedural History

On June 25, 1998 the Commission adopted a Test Claim Decision for the *Sexually Violent Predators* mandated program (CSM-4509),[9] approving mandate reimbursement for activities related to civil commitment procedures for commitment and treatment of persons adjudged to be sexually violent predators.

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[1] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 208.

[2] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 208.

[3] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[4] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

[5] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[6] *County of San Diego v. Commission on State Mandates* (2016) 7 Cal.App.5th 12, page 36, footnote 14.

[7] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 889; 880

[8] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[9] Exhibit B, Test Claim Statement of Decision, *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998.

On November 7, 2006 the voters approved Proposition 83, also known as Jessica's law, which, among other changes made, amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the CSM-4509 Test Claim Statement of Decision.[10]

On January 15, 2013, Finance filed a Request for Mandate Redetermination on *Sexually Violent Predators*, CSM-4509, pursuant to Government Code section 17570.[11] On December 6, 2013, the Commission adopted a New Test Claim Decision, partially approving the request.[12] The Commission thereafter adopted Amended Parameters and Guidelines consistent with the New Test Claim Decision on May 30, 2014, and a Statewide Cost Estimate on March 27, 2015.

On February 28, 2014, the County of San Diego, joined by the Counties of Los Angeles, Orange, Sacramento, and San Bernardino, filed a petition for writ of mandate and complaint for declaratory relief, seeking an order from the court to vacate the New Test Claim Decision, and to find that sections 17556(f) and 17570, alone or in combination, were unconstitutionally broad or vague, violated separation of powers principles, and violated article XIII B, section 6.[13] The Superior Court for the County of San Diego denied relief on May 12, 2015, and on December 28, 2016 the Court of Appeal for the Fourth District reversed, with instructions to modify the judgment and issue a writ "directing the Commission to set aside the decisions challenged in this action."[14] The State filed a Notice of Appeal on February 8, 2017 and on November 19, 2018 the California Supreme Court affirmed the Court of Appeal's decision, with new directions for remand.[15] On April 29, 2019 the Superior Court issued its judgment and writ, directing the Commission to set aside its decisions, and to reconsider Finance's Request for Mandate Redetermination in a manner consistent with the opinion of the California Supreme Court in *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.[16] The Notice of Entry of Judgment, the judgment, and the writ were served on the Commission on June 5, 2019.[17]

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[10] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83.

[11] Exhibit A, Finance's Request for Mandate Redetermination.

[12] Exhibit X, *Sexually Violent Predators (CSM 4509)*, 12-MR-01 New Test Claim Statement of Decision, page 2.

[13] Exhibit X, Petition and Complaint, Case No. 37-2014-00005050-CU-WM-CTL, County of San Diego et al.

[14] *County of San Diego v. Commission on State Mandates* (2016) 7 Cal.App.5th 12, 40.

[15] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

[16] Exhibit C, Writ of Administrative Mandamus, filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019 (San Diego County Superior Court, Case No.: 37-2014-00005050-CU-WM-CTL, in accordance with *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196); Exhibit D, Notice of Entry of Judgment, Judgment, and Writ of Mandate, San Diego Superior Court, Case No. 37-2014-00005050-CU-WM-CTL, served June 5, 2019.

[17] Exhibit C, Writ of Administrative Mandamus, filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019 (San Diego County Superior Court,

On February 8, 2019, Commission staff issued a letter requesting legal argument and comment from parties, interested parties and interested persons regarding the effect of the Supreme Court's opinion in *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196 to be filed by March 11, 2019.[18]

On March 4, 2019 the County of Orange filed a Request for Extension of Time to file comments. On March 5, 2019 the counties of Los Angeles, Sacramento, San Bernardino, and San Diego each filed a Request for Extension of Time to file comments. And, on March 6, 2019, Commission staff issued a Notice of Limited Extension Request Approval of an extension to March 22, 2019 for the requesting counties for good cause shown.

On March 8, 2019 the Department of Finance filed a Request for Extension of Time to file comments to March 22, 2019. On March 8, 2019 and March 11, 2019, the Commission received requests for extension of time to comment until at least to April 10, 2019 and postponement of hearing to September 27, 2019 from the Counties of Los Angeles, Sacramento, and San Bernardino. On March 12, 2019, the County of San Diego filed a Notice of Change of Representation and a Request for Extension of Time and Postponement of Hearing. On March 15, 2019, the County of Orange filed a Request for Extension of Time to file comments. On March 12, 2019, Commission Staff issued the Notice of Limited Approval of Request for Extension of Time and Postponement of Hearing extending the comment period until March 22, 2019 for Finance and to April 10, 2019 for the Counties of Los Angeles, Sacramento, and San Bernardino for good cause shown and postponed the hearing to September 27, 2019. On March 19, 2019, Commission staff issued the Notice of Limited Extension Request Approval extending the comment period for the Counties of Orange and San Diego to April 10, 2019.

On March 26, 2019 Finance filed late comments on the Request for Mandate Redetermination on Remand.[19] On April 10, 2019, the counties of Los Angeles,[20] Orange,[21] Sacramento,[22] San

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Case No.: 37-2014-00005050-CU-WM-CTL, in accordance with *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196); Exhibit D, Notice of Entry of Judgment, Judgment, and Writ of Mandate, San Diego Superior Court, Case No. 37-2014-00005050-CU-WM-CTL, served June 5, 2019.

[18] Exhibit E, Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

[19] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand.

[20] Exhibit G, County of Los Angeles's Comments on the Request for Mandate Redetermination on Remand.

[21] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand.

[22] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand.

Bernardino,[23] and San Diego[24] filed comments on the Request for Mandate Redetermination on Remand. The County of Los Angeles District Attorney filed late comments on April 10, 2019.[25]

On April 29, 2019, the Superior Court for the County of San Diego, Case No. 37-2014-00005050, issued its judgment and writ, directing the Commission to set aside the prior decisions on Finance's Request for Mandate Redetermination in *Sexually Violent Predators (CSM-4509)*, 12-MR-01, and to reconsider the matter consistently with the Supreme Court's opinion.[26]

On June 5, 2019, the Commission was served the Notice of Entry of Judgment, the Judgment, and the Writ of Mandate.[27]

On June 12, 2019, the County of San Diego filed additional late comments with supplementary evidence.[28]

On July 26, 2019, the Commission adopted the Order to Set Aside the Statement of Decision adopted December 6, 2013; the Statement of Decision and Amended Parameters and Guidelines adopted May 30, 2014; and the Statewide Cost Estimate adopted March 27, 2015.

On January 31, 2020, Commission staff issued the Reconsideration of the Request for Mandate Redetermination on Remand, Draft Proposed Denial of a New Test Claim Decision.[29]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statue or executive order imposes costs mandated by the state. Test claims function similarly to class

[23] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand.

[24] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand.

[25] Exhibit L, District Attorney for the County of Los Angeles's Late Comments on the Request for Mandate Redetermination on Remand.

[26] Exhibit C, Writ of Administrative Mandamus, filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019 (San Diego County Superior Court, Case No.: 37-2014-00005050-CU-WM-CTL, in accordance with *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196).

[27] Exhibit D, Notice of Entry of Judgment, Judgment, and Writ of Mandate, San Diego Superior Court, Case No. 37-2014-00005050-CU-WM-CTL, served June 5, 2019.

[28] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination on Remand.

[29] Exhibit N, Draft Proposed Denial of a New Test Claim Decision, issued January 31, 2020.

actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. As relevant to this case, a "subsequent change in law" is defined as "a change in law that requires a finding that an incurred cost . . . is not a cost mandated by the state pursuant to [Government Code] Section 17556."[30] If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.[31]

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[32]

Pursuant to the court's Judgment and Writ, the Commission is required to reconsider its Decision in a manner consistent with the opinion of the California Supreme Court, which directed the Commission to consider, on remand "whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."[33]

Staff Analysis

A. The Expanded SVP Definition and Other Indicia Support the Conclusion that Voters Reasonably Intended to Prohibit the Legislature from Repealing or Significantly Reducing the Civil Commitment Program for SVPs; However, the Voter Mandate Did Not Impose *Any* New Duties or Activities on Local Government, Nor Did It Require the State To Impose Any Duties or Activities on Local Government. Therefore, the Duties Remain Mandated by the State.

1. The Record Shows That Although the Number of SVP Referrals Has Not Increased Over Time, at Least Some Portion of All New Referrals Since 2006 Are Based on a Single Offence and Those Referrals Are Therefore Triggered by Proposition 83 and Not by the Test Claim Statutes or Other Later Changes in Law.

Several counties submitted argument and evidence regarding the number of SVP referrals to counties, or in some cases petitions for commitment filed by the county, before and after Proposition 83. The evidence does not show a permanent increase in the number of referrals to counties, commitment petitions filed, or commitments imposed following the passage of

[30] Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856).

[31] Government Code section 17570 (Stats. 2010, ch. 719 (SB 856).

[32] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 46 Cal.App.4th 1802, 1817.

[33] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

Proposition 83. Rather, it shows a spike in referrals and petitions in 2007 and 2008, followed by a significant decline in the following years. Some of the counties assert that the decline of referrals and petitions is because the definitional changes made in Proposition 83 did not alter the final, controlling criterion for civil commitment of an SVP – that the potential SVP must also have a diagnosable mental condition that necessitates confinement and treatment.[34] However, as discussed in the Proposed Decision, a likely cause for the overall decrease in referrals is the change made by Statutes 2006, chapter 337 (SB 1128) from a two-year period of commitment (requiring new SVP commitment every two years) to an indefinite period of commitment. In addition, data from one county shows a number of SVP referrals of persons convicted of a single sexually violent offense in accordance with Proposition 83, though the other counties did not provide breakdowns of whether their referrals were based on persons convicted of a sexually violent offence against one or more than one victim.

As noted in the Proposed Decision, much of the data and evidence in the record, including the State Auditor's report, do not isolate the effects of the amendments to the "definition" of an SVP attributable to Proposition 83, from those attributable to Statutes 2006, chapter 337 (SB 1128). Therefore, it is difficult to tell to what extent the petitions from 2006 to present day are based on only one offense. Nonetheless, the Sacramento County data indicates that approximately one-third of the petitions it has filed since 2009 were based on a single offence and therefore there is evidence in the record that at least some portion of all referrals and petitions are now based on only a single offence.[35]

Therefore, staff finds that at least some portion of all new referrals since 2006 are based on a single offence and those referrals are therefore triggered by Proposition 83 and not by the test claim statutes or other later changes in law.

2. An Ongoing Program and Policy of Civil Commitment of SVPs Is *Integral* to Accomplishing the Electorate's Goals in Enacting Proposition 83 and Other Indicia Support the Conclusion that Voters Reasonably Intended to Prohibit the Legislature from Repealing or Significantly Reducing the Civil Commitment Program.

The issue here is whether the voters are now the source of the mandated activities.

The Court in *County of San Diego* held that "[w]here the Legislature cannot use the ordinary legislative process to amend or alter duties imposed by the voters (see Cal. Const., art. II, § 10, subd. (c)), it can no longer be reasonably characterized as the source of those duties."[36] And, the Court observed, "[t]he evident purpose of limiting the Legislature's power to amend an initiative statute is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent."[37] But, the Court continued, "we

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[34] See, e.g., Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, pages 4-5.

[35] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

[36] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 207.

[37] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211 (quoting *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597 [internal quotations omitted].).

have never had occasion to consider precisely 'what the people have done' and what qualifies as 'undoing' when the subject is a statutory provision whose reenactment was constitutionally compelled under article IV, section 9 of the Constitution."[38]

The Court rejected the Commission's original reasoning and findings that the test claim provisions in Welfare and Institutions Code sections 6601, 6604, and 6605, were "expressly included in" the ballot measure, within the meaning of Government Code section 17556(f), merely by virtue of being restated and reenacted within the text Proposition 83 in accordance with article IV, section 9.[39] The Court held instead that "no indication appears in the text of the initiative, nor in the ballot pamphlet, to suggest voters would have reasonably understood they were restricting the Legislature from amending or modifying any of the duties set forth in the test claim statutes."[40] In this respect, the court stated that when technical reenactments [of existing provisions] are required to be included in a ballot measure under article IV, section 9 of the California Constitution – yet involve no substantive change in a given statutory provision – the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process and, thus, remains the source of the duties.[41] This conclusion applies "*unless* the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute."[42]

Thus, in order to determine whether Proposition 83 "transformed" the test claim statutes into a voter-imposed mandate, the Commission must determine the extent to which the Legislature "retains the power to amend [the test claim statutes] through its ordinary legislative process."[43] To make that determination, the Commission must consider the electorate's goals when adopting Proposition 83, and determine whether and to what extent those goals and "other indicia" support a conclusion that the voters reasonably intended to limit the Legislature's ability to subsequently amend the test claim statutes. As described below, the voters were informed by the Ballot Pamphlet, the Legislative Analyst's Office summary, and the text of Proposition 83 itself, that the Proposition would expand the definition of an SVP, and "strengthen and improve the laws that . . . control sexual offenders."[44] And from that, when read in context of Proposition 83's Amendment Clause and article II, section 10 of the California Constitution, it can be inferred that voters intended to preserve and expand the policy of civil commitment of SVPs.

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[38] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211 (quoting *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597.)

[39] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 215.

[40] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 213-214.

[41] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

[42] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 (emphasis in original).

[43] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214

[44] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, sections 1; 31, pages 10; 21.

The limitations imposed on the Legislature's authority to amend the SVPA derive from article II, section 10, and the "somewhat liberalized constraints" of the Amendment Clause found in section 33 of Proposition 83.[45] Article II, section 10 of the California Constitution provides that "[t]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval." Proposition 83's Amendment Clause is slightly more permissive with respect to *amendments*, but is silent on *repeal*:

> The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.[46]

Therefore, Proposition 83 itself permits a simple majority vote to enact amendments that "expand the scope" of the provisions of the act or "increase the punishments or penalties."[47] Meanwhile any other amendment of the "provisions of this act" other than to expand the scope or increase penalties or punishments requires a two-thirds super-majority vote or a statute approved by the voters. Moreover, a complete repeal of the SVPA, or an amendment that substantially undermines the SVPA, would require submitting the question to the voters, pursuant to article II, section 10 and *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577.[48]

The Amendment Clause applies to those provisions substantively and actually amended by Proposition 83, including the definition of an SVP, and any other provision the repeal or narrowing of which would undermine the voter's intent in approving Proposition 83 to "to strengthen and improve the laws that punish and control sexual offenders." Thus, Finance is correct to the extent it argues that "voters also insulated these definitional changes from legislative repeal or revision."[49]

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[45] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211.

[46] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, sections 33.

[47] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 33.

[48] See *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 212-214 (The Court discussed *Shaw* at length, in which the Legislature "sought to undermine the voter-created [transportation] trust fund by adding new provisions to divert those funds from uses the voters had previously designated." The Court characterized this amendment as "alter[ing] the voters' careful handiwork, both the text and its intended purpose," and the Court noted with approval the *Shaw* court's holding that such Legislative "tinker[ing]" was improper and inconsistent with the voters' intent.)

[49] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

The key to determining whether the voters or the Legislature is the source of the mandate lies in determining whether the expanded definition is *integral* to the electorate's goals in enacting the initiative, or if "other indicia support the conclusion that the voters reasonably intended to limit the Legislature's ability to amend" the test claim provisions.[50]

The Official Title and Summary of Proposition 83 states that the Proposition:

- Increases penalties for violent and habitual sex offenders and child molesters.
- Prohibits registered sex offenders from residing within 2,000 feet of any school or park.
- Requires lifetime Global Positioning System monitoring of felony registered sex offenders.
- *Expands definition of a sexually violent predator.*
- *Changes current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment*, subject to annual review by the Director of Mental Health and subsequent ability of sexually violent predator to petition court for sexually violent predator's conditional release or unconditional discharge.[51]

The Legislative Analyst's Office's description of the initiative, as relevant to the SVP program, states:

> ***Change SVP Law.*** This measure generally makes more sex offenders eligible for an SVP commitment. It does this by (1) reducing from two to one the number of sexually violent offenses that qualify 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.[52]

And, the findings and declarations in the text of Proposition 83 itself states that "existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved."[53]

Thus, Proposition 83 as put before the voters sought amendments to strengthen and improve the laws that control sexual offenders as follows:

- Proposed amendment to section 6000 to *expand* the definition of a sexually violent predator by broadening the underlying criminal offenses supporting a finding that a

[50] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

[51] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, page 4 (emphasis added).

[52] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, page 6.

[53] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 2(h), page 10.

person is an SVP; by reducing the number of underlying qualifying offenses from two to one; and by removing the ceiling on juvenile offenses applied as qualifying.[54]

- Proposed amendment to section 6601 to provide that an SVP determination and commitment shall toll the term of parole for the underlying offense or offenses during indeterminate civil commitment.[55]
- Proposed amendment to section 6604 to provide for indeterminate commitment, and accordingly, to eliminate the requirement to hold a new SVP hearing every two years.[56]
- Proposed amendment to section 6605 to eliminate the requirement that the Department of Mental Health provide annual notice of an SVP's right to petition for release, and eliminate the requirement that the court must hold a show cause hearing if not waived by the committed person. Under amended section 6605, DMH would authorize an SVP to file a petition for release *if* the annual report by DMH finds it appropriate.[57]
- Proposed amendment to section 6608 to provide that even without DMH approval, "nothing in this article shall prohibit" a committed SVP from petitioning for conditional release *or* unconditional discharge. But the section would still prohibit frivolous petitions: if a prior petition was found to be frivolous the court shall deny the petition unless new facts are presented.[58]
- In addition, section 6600.1, not part of the original 1998 test claim decision, nor part of the 1995 and 1996 test claim statutes, was proposed to be amended by Proposition 83 to remove a requirement that sexual offenses against children under 14 must involve "substantial sexual conduct" in order to qualify as sexually violent offenses within the meaning of section 6600(b).[59]
- And, section 6604.1, which also was not included in the test claim decision or the test claim statutes, was proposed to be amended by Proposition 83 to provide that the indeterminate term of commitment shall commence on the date the court issues the initial order of commitment. Previously (before the circulation of Proposition 83 and enactment of SB 1128) this section provided that a *two-year* term of commitment would begin on

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[54] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, pages 18-19 [Proposed amendments to Welfare and Institutions Code section 6600 (a)(1); (b); (g)].

[55] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 26 page 20 [Proposed amendments to Welfare and Institutions Code section 6601(k)].

[56] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 27, page 20 [Proposed amendments to Welfare and Institutions Code section 6604].

[57] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 29, page 20 [Proposed amendments to Welfare and Institutions Code section 6605].

[58] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 30, page 21 [Proposed amendments to Welfare and Institutions Code section 6608].

[59] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 25, page 19 [Proposed amendments to Welfare and Institutions Code section 6600.1].

> the date the court issued the order of commitment, and for subsequent extended commitments, the term would be two years commencing from the date of termination of the previous commitment. This section would have been unworkable and inconsistent with the indeterminate commitment provided for under amended section 6604 without amendment.[60]

As discussed in the Proposed Decision, many of these proposed amendments were in fact first enacted by Statutes 2006, chapter 337 (SB 1128), which became effective on September 20, 2006, approximately seven weeks before the election in which Proposition 83 was adopted. As a result, those amendments enacted prior to the adoption of Proposition 83 are not, based on their restatement under the reenactment rule alone, expressly included as part of the ballot measure.[61]

The Court directed the Commission to consider the electorate's goals and intent in adopting the initiative, and all of the proposed amendments could be relevant to the voters' understanding of the scope of the initiative, and thus relevant to discerning their goals in enacting the initiative. The Legislature is generally presumed to know the state of the law, but the voters are not necessarily held to the same standard: "Although not deciding the validity of the legislative presumption as it applies to voter initiatives, the Supreme Court has acknowledged there exists [sic] qualitative and quantitative differences between the state of knowledge of informed voters and that of elected members of the Legislature."[62] Here, because SB 1128 and Proposition 83 were enacted so close in time, and because the ballot pamphlet for Proposition 83, including the proposed text, was prepared and circulated before SB 1128 was enacted, the voters, realistically, would have had no way of knowing that these provisions were already in effect. And because each of the proposed amendments appeared in the strikeout and italics of Proposition 83, those provisions would have appeared to voters as entirely new provisions in law. This includes the change from two-year commitments to indeterminate commitments, and the expansion of the list of underlying offenses that qualify as "sexually violent offense[s]."[63] Both of those amendments, first enacted within SB 1128, nevertheless appeared on the face of Proposition 83. Therefore, even though the enactment of SB 1128 in September of 2006 effectively blunted the

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[60] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 28, page 20 [Proposed amendments to Welfare and Institutions Code section 6604.1].

[61] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 209-210, where the court held that "Statutory provisions that are not actually reenacted and are instead considered to 'have been the law all along' . . . cannot fairly be said to be part of a ballot measure within the meaning of Government Code section 17556, subdivision (f)."

[62] *McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 214 (citing *People v. Davenport* (1985) 41 Cal.3d 247, 263, Fn 6 ["We recognize that in California initiatives are written and enacted without the benefit of the hearings, debates, negotiation and other processes by which the Legislature informs itself of the ramifications of its actions. Thus there may be some basis for the argument that some of the principles which guide courts in their efforts to ascertain the intent of particular statutory provisions enacted through the legislative process may not carry the same force and logic when applied to an initiative measure."].)

[63] Welfare and Institutions Code sections 6604; 6600(b) (Stats. 2006, chapter 337 (SB 1128)).

effects of Proposition 83, any and all provisions that *appeared to be amended* by Proposition 83 could be considered a part of the electorate's goals and intent, including the change from two-year commitments to indeterminate commitments, and the changes in sections 6605 and 6608 addressing the SVP's petitioning for release from commitment.

Therefore, consistent with the amended definition itself, "what the people have done" and what cannot be "undone" through the ordinary legislative process must include a *general intent* that civil commitment of SVPs continue, based on the text of Proposition 83, the legislative intent statement in section 31 of the initiative, the ballot arguments, and other information in the Voter Guide, discussed above. In other words, even if "[t]he provisions of this act," for purposes of the Amendment Clause, does not expressly include each and every provision of the Welfare and Institutions Code that was technically restated in the ballot measure, the electorate's goals in enacting the initiative include the continuance and expansion of civil commitment of SVPs and some of the provisions so restated are integral to accomplishing that goal and other indicia (i.e. the ballot materials) support the conclusion that voters reasonably intended to limit the Legislature's ability to amend those parts of the statute integral to maintaining a civil commitment program. It would therefore be inconsistent with article II, section 10 to *repeal* the SVP program as a whole- leaving only the definition, or to undermine significant portions of the civil commitment policy without submitting the question first to the electorate.[64] Some minor amendments, such as those pointed out by the Court in *County of San Diego*[65] may be permissible, based on the Court's reading of the Amendment Clause. But based on the analysis herein, the Legislature has not retained its ordinary legislative authority to *repeal* or significantly *reduce the scope* of civil commitment, and as such the voters are the source of an ongoing policy of civil commitment of SVPs.

Based on the foregoing, staff finds that an ongoing program and policy of civil commitment of SVPs is *integral* to accomplishing the electorate's goals in enacting Proposition 83, and other indicia (such as the information in the ballot pamphlet) support the conclusion that voters reasonably intended to prohibit the Legislature from repealing or significantly reducing the scope of the civil commitment program.

3. Proposition 83 Does Not Constitute a Subsequent Change in Law that Modifies the State's Liability for the SVP Program Because the Activities and Costs to Implement a Civil Commitment Program in Accordance with the Voter Mandate Have Been Shifted to Counties Based on the State's "True Choice" and, Thus, the Activities and Costs Remain Mandated by the State.

To the extent the voters mandated a civil commitment program, and that voter mandate triggers a process that must be provided to implement that program consistent with constitutional due

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[64] See *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577 (Rejecting legislative amendments that undermined the transportation trust fund created by Proposition 116.)

[65] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211-212 (E.g., Stats. 2012, ch. 24, and Stats. 2012, ch. 440, which changed "Department of Mental Health" to "Department of State Hospitals" in several instances. These were technical, non-substantive changes, but nevertheless were not consistent with the plain language of Proposition 83's Amendment Clause, which requires a two-thirds legislative majority to amend "the provisions of this act" unless to expand the scope of the act or increase punishments or penalties.).

process requirements, there is no indication that the voters required that the process must be provided by *local government*. As the court in *Hayes* explained, when the state shifts costs to local agencies, even if the costs are imposed upon the state by federal law, or in this case a ballot measure, reimbursement under article XIII B, section 6 is required:

> A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.[66]

Similarly, the Court in *Department of Finance v. Commission on State Mandates* (*Stormwater*) held that where the State had a "primary responsibility" for certain inspection requirements under both federal and state law, and "shifted that responsibility" to local governments through its permitting authority, those inspection requirements were not *federal* mandates.[67]

Here, unlike some other states with civil commitment programs for SVPs that provide for the filing of a commitment petition and the prosecution of the case to be handled by a state official rather than by county authorities, California law charges counties with the filing of the commitment petition as well as the prosecution and defense of the petition.[68]

Additionally, Welfare and Institutions Code section 6602 requires a formal probable cause hearing, and requires the assistance of counsel at that hearing, in excess of federal due process guarantees required for a civil commitment program. The activities and costs associated with this entirely separate hearing exceed the scope of the activities in *San Diego Unified School Dist*. (i.e. "primarily various notice, right of inspection, and recording rules"), which in that case were treated as part and parcel to the underlying federal program since those activities produced incidental and de minimis costs.[69] Therefore, the activities and costs associated with the probable cause hearings are not necessary to implement voter-imposed civil commitment, but

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[66] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594; see also, *Department of Finance v. Commission on State Mandates* (*Stormwater*) (2016) 1 Cal.5th 749, 765, affirming that principle.

[67] *Department of Finance v. Commission on State Mandates* (Stormwater) (2016) 1 Cal.5th 749, 771.

[68] Revised Code Washington 71.09.030; Iowa Code 229A.4; Kansas Statutes Annotated 59-29a04.

[69] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 873, footnote 11, and 890.

instead are required based on the state's "true choice."[70] Moreover, no "other indicia support the conclusion" that the voters specifically or generally intended that probable cause hearings be included as part of the civil commitment process. Thus, the state is free to eliminate the probable cause hearing using its ordinary legislative process,[71] and the probable cause hearing and the costs associated with it are not necessary to implement Proposition 83 within the meaning of Government Code section 17556(f).

Accordingly, the Commission finds that the Legislature retains substantial discretion with respect to the activities involved in the program, and with respect to how those activities become imposed upon the counties. Based on these and the above findings, the Commission finds that the activities required by the test claim statutes remain mandated by the state and, thus, Proposition 83 does not constitute a subsequent change in law that modifies the state's liability for the *Sexually Violent Predator* program.

Conclusion

Based on the forgoing analysis, staff finds that the expanded SVP definition and other indicia support the conclusion that voters reasonably intended to prohibit the legislature from repealing or significantly reducing the civil commitment program for SVPs; however, the voter mandate did not impose *any* new duties or activities on local government, nor did it require the state to impose any duties or activities on local government. therefore, the duties remain mandated by the state. Specifically, staff finds:

- The record shows that although the number of SVP referrals has not increased over time, at least some portion of all new referrals since 2006 are based on a single offence and those referrals are therefore triggered by Proposition 83 and not by the test claim statutes or other later changes in law.
- An ongoing program and policy of civil commitment of SVPs is *integral* to accomplishing the electorate's goals in enacting Proposition 83 and other indicia support the conclusion that voters reasonably intended to prohibit the legislature from repealing or significantly reducing the civil commitment program.
- Proposition 83 does not constitute a subsequent change in law that modifies the state's liability for the SVP program because the activities and costs to implement a civil commitment program in accordance with the voter mandate have been shifted to counties based on the state's "true choice" and, thus, the activities and costs remain mandated by the state.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the Request for Mandate Redetermination and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

[70] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593.

[71] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION ON REMAND: Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608 as added or amended by: Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and Statutes 1996, Chapter 4 (AB 1496) *Sexually Violent Predators (CSM-4509)*, As Alleged to be Modified by: Proposition 83, General Election, November 7, 2006 Filed on January 15, 2013 By the Department of Finance, Requester Notice of Entry of Judgment and Writ of Mandate Remanding the Matter for Reconsideration Served June 5, 2019	Case No.: 12-MR-01-R *Sexually Violent Predators (CSM-4509)*, 12-MR-01 RECONSIDERATION OF REQUEST FOR MANDATE REDETERMINATION PURSUANT TO COURT ORDER [Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196; Judgment and Writ of Mandate Issued by Superior Court for the County of San Diego, Case No. 37-2014-00005050-CU-WM-CTL.] (*Adopted March 27, 2020*)

DECISION

The Commission in State Mandates (Commission) heard and decided this Request for Mandate Redetermination on Remand during a regularly scheduled hearing on March 27, 2020. [Witness list will be included in the adopted Decision.]

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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Request for Mandate Redetermination on Remand by a vote of [vote will be included in the adopted Decision], as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

This matter is was remanded from the Court to determine "whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."[72] With regard to the State's argument, first raised on appeal, that "the specified local government duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform any duties for this class of offenders until the voters by initiative expanded the definition of an SVP,"[73] the Court also found that "the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments."[74]

The Commission finds that the expanded sexually violent predator (SVP) definition and other indicia support the conclusion that voters reasonably intended to prohibit the Legislature from repealing or significantly reducing the civil commitment program for SVPs; however, the voter mandate did not impose *any* new duties or activities on local government, nor did it require the state to impose any duties or activities on local government. Therefore, the duties remain mandated by the state. Specifically, the Commission finds:

- The record shows that although the number of SVP referrals has not increased over time, at least some portion of all new referrals since 2006 are based on a single offense and those referrals are therefore triggered by proposition 83 and not by the test claim statutes or other later changes in law.
- An ongoing program and policy of civil commitment of SVPs is *integral* to accomplishing the electorate's goals in enacting Proposition 83 and other indicia support the conclusion that voters reasonably intended to prohibit the legislature from repealing or significantly reducing the civil commitment program.
- Proposition 83 does not constitute a subsequent change in law that modifies the state's liability for the SVP program because the activities and costs to implement a civil commitment program in accordance with the voter mandate have been shifted to counties based on the state's "true choice" and, thus, the activities and costs remain mandated by the state.

COMMISSION FINDINGS

I. Chronology

06/25/1998 The Commission adopted the Test Claim Decision on the *Sexually Violent Predators*, CSM-4509 program, approving eight activities related to civil commitment procedures for persons alleged to be sexually violent predators.[75]

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[72] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[73] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

[74] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[75] Exhibit B, Test Claim Statement of Decision, *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998.

11/07/2006 The voters adopted Proposition 83, which amended some of the Welfare and Institutions Code sections approved in the Test Claim Decision.

01/15/2013 The Department of Finance (Finance) filed a Request for Mandate Redetermination alleging that Proposition 83 constitutes a subsequent change in law that modifies the State's liability for the SVP program.[76]

12/06/2013 The Commission adopted the New Test Claim Decision, approving Finance's Request for Redetermination ending reimbursement for six and approving reimbursement for two of the original eight approved activities.[77]

02/28/2014 The Counties of San Diego, Los Angeles, Orange, Sacramento, and San Bernardino filed a petition for writ of mandate and complaint for declaratory relief.

05/30/2014 The Commission adopted the Statement of Decision and Amended Parameters and Guidelines for the New Test Claim Decision.

03/27/2015 The Commission adopted the Statewide Cost Estimate for the New Test Claim Decision.

11/19/2018 The California Supreme Court held that the Commission's New Test Claim Decision was not supported, and remanded the matter to the trial court to issue a writ directing the Commission to set aside the New Test Claim Decision, the Parameters and Guidelines, and the Statewide Cost Estimate and reconsider its New Test Claim Decision to address specific issues identified in the Court's decision.

02/08/2019 Commission staff issued a Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196 to be filed by March 11, 2019.[78]

03/04/2019 The County of Orange filed a Request for Extension of Time to file comments.

03/05/2019 The counties of Los Angeles, Sacramento, San Bernardino, and San Diego each filed a Request for Extension of Time to file comments.

03/06/2019 Commission staff issued a Notice of Limited Extension Request Approval of an extension to March 22, 2019 for the requesting counties for good cause shown.

03/08/2019 Finance filed a Request for Extension of Time to file comments to March 22, 2019.

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[76] Exhibit A, Finance's Request for Mandate Redetermination.

[77] Exhibit X, *Sexually Violent Predators (CSM-4509)*, 12-MR-01 New Test Claim Statement of Decision, adopted December 6, 2013.

[78] Exhibit E, Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

03/08/2019 and 03/11/2019	The Counties of Los Angeles, Sacramento, and San Bernardino filed requests for extension of time to comment until at least to April 10, 2019 and postponement of hearing to September 27, 2019.
03/12/2019	The County of San Diego filed a Notice of Change of Representation and a Request for Extension of Time and Postponement of Hearing.
03/12/2019	Commission staff issued a Notice of Limited Approval of Request for Extension of Time and Postponement of Hearing extending the comment period for Finance to March 22, 2019 and for the Counties of Los Angeles, Sacramento, and San Bernardino to April 10, 2019 for good cause shown and Approval of Postponement of Hearing to September 27, 2019.
03/15/2019	The County of Orange filed a Request for Extension of Time to file comments.
03/19/2019	Commission staff issued a Notice of Limited Extension Request Approval extending the comment period to April 10, 2019 for the counties of Orange and San Diego.
03/26/2019	Finance filed Late Comments on the Request for Mandate Redetermination on Remand.[79]
04/10/2019	The County of Los Angeles filed Comments on the Request for Mandate Redetermination.[80]
04/10/2019	The County of Orange filed Comments on the Request for Mandate Redetermination.[81]
04/10/2019	The County of Sacramento filed Comments on the Request for Mandate Redetermination.[82]
04/10/2019	The County of San Bernardino filed Comments on the Request for Mandate Redetermination.[83]
04/10/2019	The County of San Diego filed Comments on the Request for Mandate Redetermination.[84]

[79] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand.

[80] Exhibit G, County of Los Angeles's Comments on the Request for Mandate Redetermination on Remand.

[81] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand.

[82] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand.

[83] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand.

[84] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand.

04/10/2019 The District Attorney for the County of Los Angeles filed Late Comments on the Request for Mandate Redetermination [85]

04/29/2019 The Superior Court for the County of San Diego, Case No. 37-2014-00005050, entered the judgment and writ, directing the Commission to set aside the prior decisions on Finance's Request for Mandate Redetermination in *Sexually Violent Predators (CSM-4509),* 12-MR-01, and to reconsider the matter consistently with the Supreme Court's opinion.[86]

06/05/2019 The Commission was served the Notice of Entry of Judgment, with the Judgment attached, and the Writ of Mandate.[87]

06/12/2019 The County of San Diego filed additional Late Comments on the Request for Mandate Redetermination on Remand.[88]

07/26/2019 The Commission adopted the Order to Set Aside the Statement of Decision adopted December 6, 2013, the Statement of Decision and Amended Parameters and Guidelines adopted May 30, 2014, and the Statewide Cost Estimate adopted March 27, 2015 pursuant to the court's Judgment and Writ of Mandate.

01/31/2020 Commission staff issued the Draft Proposed Denial of a New Test Claim Decision on Remand.[89]

II. Background

A. Test Claim Decision Adopted June 25, 1998

The *Sexually Violent Predators* (*SVP*), CSM-4509 program established procedures for the civil detention and treatment of sexually violent predators (SVPs) following the completion of an individual's criminal sentence imposed for certain sex-related offenses. The test claim statutes, specifically Statutes 1995, chapters 763 and 764, defined a "sexually violent predator" in section 6600(a) of the Welfare and Institutions Code as "a person who has been convicted of a sexually violent offense against two or more victims for which he or she has received a determinate sentence 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 criminal

[85] Exhibit L, District Attorney for the County of Los Angeles's Late Comments on the Request for Mandate Redetermination on Remand.

[86] Exhibit C, Writ of Administrative Mandamus, filed in the San Diego Superior Court April 29, 2019 and served to the Commission June 5, 2019 (San Diego County Superior Court, Case No.: 37-2014-00005050-CU-WM-CTL, in accordance with *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196).

[87] Exhibit D, Notice of Entry of Judgment, Judgment, and Writ of Mandate, San Diego Superior Court, Case No. 37-2014-00005050-CU-WM-CTL, served June 5, 2019.

[88] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination on Remand.

[89] Exhibit N, Draft Proposed Denial of a New Test Claim Decision, issued January 31, 2020

behavior."[90] Thus, for a person to be deemed an SVP and civilly committed under the SVP mandate as originally approved, the person must be (1) convicted; (2) of a sexually violent offense; (3) against two or more victims; (4) received a determinate sentence; and (5) have a diagnosed mental disorder that makes the person a danger to others and presents a likelihood that the person will engage in future sexually violent criminal behavior. Section 6600(b) defined "sexually violent offense" to mean the following acts when committed by "force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or on another person, and that are committed before or after the effective date of [the statute], and result in a conviction and a determinant sentence," a felony conviction for section 261(a)(2) [forcible rape]; section 262(a)(1) [forcible rape of a spouse]; section 264.1 [conspiracy to commit rape, spousal rape, or forcible penetration by force or violence]; section 288(a or b) [lewd or lascivious acts with a minor under 14]; 289 [forcible sexual penetration]; or sections 286 [sodomy] or former 288a [oral copulation].[91] And finally, a "diagnosed mental disorder" was defined to include "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person as a menace to the health and safety of others."[92]

Under the test claim statutes, before civil detention and treatment can be imposed, the Department of Corrections must refer a potential SVP, at least six months before the person's release date, for screening by the Department of Corrections and the Board of Prison Terms (now the Parole Board).[93] If that screening finds that the person may be an SVP, the statutes require a mental health examination by two qualified psychiatrists or psychologists with the Department of Mental Health (now Department of State Hospitals).[94] The Department of State Hospitals evaluates the person using a standardized assessment protocol developed by the Department, which includes assessing mental disorders and risk factors. The two evaluating professionals must concur that the person is an SVP; but if they do not, a second evaluation by independent professionals outside state government is required.[95] If the two professionals performing the evaluation find that the person *is* an SVP, the Department then forwards a request to the county in which the offense occurred to file a petition to have the person committed.[96]

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[90] Welfare and Institutions Code section 6600(a) (as amended, Stats. 1995, ch. 762 and ch.763.

[91] Welfare and Institutions Code section 6600(b) (as amended, Stats. 1995, ch. 762 and ch. 763.

[92] Welfare and Institutions Code section 6600(c) (as amended, Stats. 1995, ch. 762 and ch. 763.

[93] Welfare and Institutions Code section 6601(as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

[94] Welfare and Institutions Code section 6601(as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

[95] Welfare and Institutions Code section 6601(as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

[96] Welfare and Institutions Code section 6601(as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

If the county's designated counsel concurs, the county counsel or district attorney files a petition for civil commitment.[97] The petition must first withstand a probable cause hearing, in which the judge must determine whether to go forward with a trial on the person's SVP status, or dismiss the petition and send the person to his or her parole.[98] A trial is then conducted to determine beyond a reasonable doubt if the person is an SVP.[99] If the person alleged to be an SVP is indigent, the county is required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.[100]

On June 25, 1998 the Commission adopted the Test Claim Decision for the *Sexually Violent Predators,* CSM-4509 mandated program.[101] That Decision approved mandate reimbursement for the following activities related to the counties' filing of petitions for civil commitment of sexually violent predators:

1. 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).)
2. 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).)
3. Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601(i).)
4. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
5. Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
6. 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-d), and 6608(a-d).)
7. 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).)

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[97] Welfare and Institutions Code section 6601(as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

[98] Welfare and Institutions Code section 6602 (as amended, Stats. 1995, ch. 762 and ch. 763 and Stats. 1996, ch. 4).

[99] Welfare and Institutions Code sections 6602-6604 (as amended, Stats. 1995, ch. 762 and ch. 763).

[100] Welfare and Institutions Code section 6603 (as amended, Stats. 1995, ch. 762 and ch. 763).

[101] Exhibit B, Test Claim Statement of Decision, *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998.

8. 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.)[102]

The Commission thereafter adopted Parameters and Guidelines consistent with the Test Claim Decision on September 24, 1998, and the boilerplate language of those and many other Parameters and Guidelines was amended on October 30, 2009.

B. Subsequent Amendments to the Test Claim Statutes Made by Statutes 1996, Chapter 462; Statutes 1998, chapter 19; Statutes 2006, Chapter 337 (SB 1128); and Proposition 83 (November 7, 2006)

Statutes 1996, chapter 462 amended section 6600(a) of the Welfare and Institutions Code, effective September 13, 1996, to add that for purposes of SVP commitment, conviction of a sexually violent offense includes a finding of not guilty by reason of insanity; a conviction prior to July 1, 1977, resulting in an indeterminate sentence; a conviction resulting in a finding that the person is a mentally disordered sex offender; or a conviction in another state that includes all the elements of an offense described in section 6600(b) of the Welfare and Institutions Code, thereby expanding the class of offenders to which the civil commitment process applies. Statutes 1996, chapter 462 was never the subject of a test claim and the statute of limitations for filing a test claim on this statute has long past.

Statutes 1998, chapter 19, among other things, amended section 6602.5 to provide that no person may be placed in a state hospital pursuant to sections 6601.3 and 6602 without a finding of probable cause pursuant to 6602. And section 6602.5 provided a process to identify persons in custody who had not had a probable cause hearing and, within 30 days, either remove the person from the state hospital and return the person to local custody or provide a probable cause hearing, thereby increasing the number of probable cause hearings. Statutes 1998, chapter 19 was also never the subject of a test claim.

On August 15, 2005, Assembly member Sharon Runner amended her bill, AB 231, to propose the substance of what would become known as Proposition 83.[103] At around the same time, Assembly member Sharon Runner and her husband State Senator George Runner began the work of qualifying the proposal as a Proposition to put before the voters.[104] AB 231 failed passage in January 2006, and State Senator Alquist introduced a similar bill that same month, SB 1128,

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[102] Exhibit B, Test Claim Statement of Decision, *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998, pages 3 and 13h.

[103] See Exhibit X, AB 231 as Amended, August 15, 2005; Exhibit X, Assembly Committee on Public Safety, Analysis of SB 1128 as amended January 10, 2006. See also, Exhibit X, Written Comment by Senator George Runner (Ret.), Late Filing for September 27, 2013 Hearing of the Commission on State Mandates, dated September 26, 2013.

[104] California Secretary of State, Campaign Finance Data, Campaign for Child Safety 2006, Jessica's Law, Yes on 83 (Fundraising Events in support of the Proposition began in December 2005) http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1277423&session=2005&view=expenditures (accessed February 28, 2019).

which contained many of the same proposed amendments to the Penal Code and the Welfare and Institutions Code found in AB 231 and Proposition 83.[105] SB 1128 passed as an urgency measure seven weeks prior to the election in which Proposition 83 was adopted.[106] Accordingly, most of the additions and amendments to the Penal Code and Welfare and Institutions Code which were proposed in Proposition 83 were enacted by SB 1128 on September 20, 2006 and became effective immediately upon enactment and prior to the election in which Proposition 83 was put before the voters.[107] And, just as with Statutes 1996, chapter 462, no test claim was filed on Statutes 2006, chapter 337 (SB 1128), despite the significant expansion of the class of offenders to which the civil commitment process applies.

On November 7, 2006 the voters approved Proposition 83, also known as the "Sexual Predator Punishment and Control Act: Jessica's Law," after Jessica Lunsford, of Florida, who was abducted and killed by a registered sex offender.[108] Proposition 83 proposed to amend and reenact several sections of the Penal Code and the Welfare and Institutions Code, including some of the sections approved for reimbursement in the CSM-4509 Test Claim.[109] The Voter Guide for Proposition 83 stated its goals as follows:

- Increases penalties for violent and habitual sex offenders and child molesters.
- Prohibits registered sex offenders from residing within 2,000 feet of any school or park.
- Requires lifetime Global Positioning System (GPS) monitoring of felony registered sex offenders.
- Expands definition of sexually violent predator.
- Changes current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment, subject to annual review by the Director of Mental Health and subsequent ability of sexually violent predator to petition court for sexually violent predator's conditional release or unconditional discharge.[110]

With respect to the SVP program specifically, Proposition 83 proposed the following changes:

- Section 6600 expanded the definition of a sexually violent predator by broadening the underlying criminal offenses supporting a finding that a person is an SVP; by reducing

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[105] Exhibit X, Senate Committee on Public Safety, Analysis of SB 1128, as amended March 7, 2006, page 35 [Describing some of the similarities of and differences between Proposition 83 and SB 1128].

[106] Statutes 2006, chapter 337 (SB 1128), enacted September 20, 2006.

[107] Government Code section 9600(b).

[108] Exhibit X, *California Follows Trend with Sex-Offender Crackdown*, Capitol Public Radio, November 2, 2006, https://www.npr.org/templates/story/story.php?storyId=6418295 (accessed February 28, 2019).

[109] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83.

[110] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, page 4.

the number of victims of underlying qualifying offenses from 2 to 1; and by removing the ceiling on juvenile offenses applied as qualifying.[111]

- Section 6601 provides that an SVP determination and commitment shall toll the term of parole for the underlying offense or offenses during indeterminate civil commitment.[112]
- Section 6604 provides for indeterminate commitment, and accordingly, eliminates the requirement to hold a new SVP hearing every two years.[113]
- Section 6605 eliminates the requirement that the Department of Mental Health provide annual notice of an SVP's right to petition for release, and eliminates the requirement that the court must hold a show cause hearing if not waived by the committed person. Under amended section 6605, DMH would authorize an SVP to file a petition for release if the annual report by DMH finds it appropriate.[114]
- Section 6608 provides that even without DMH approval, "nothing in this article shall prohibit" a committed SVP from petitioning for conditional release *or* unconditional discharge. But the section would still prohibit frivolous petitions: if a prior petition was found to be frivolous the court shall deny the petition unless new facts are presented.[115]
- In addition, section 6600.1, not part of the original 1998 test claim decision, nor part of the 1995 and 1996 test claim statutes, removes a requirement that sexual offenses against children under 14 must involve "substantial sexual conduct" in order to qualify as sexually violent offenses within the meaning of section 6600(b).[116]
- And, section 6604.1, also not part of the original 1998 test claim decision or the 1995 and 1996 test claim statutes, provides that the indeterminate term of commitment shall commence on the date the court issues the initial order of commitment. Previously this section provided that a *two-year* term of commitment would begin on the date the court issued the order of commitment, and for subsequent extended commitments, the term would be two years commencing from the date of termination of the previous commitment. This section would have been unworkable and inconsistent with the

[111] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, pages 18-19 [Proposed amendments to Welfare and Institutions Code section 6600 (a)(1); (b); (g)].

[112] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 26 page 20 [Proposed amendments to Welfare and Institutions Code section 6601(k)].

[113] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 27, page 20 [Proposed amendments to Welfare and Institutions Code section 6604].

[114] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 29, page 20 [Proposed amendments to Welfare and Institutions Code section 6605].

[115] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 30, page 21 [Proposed amendments to Welfare and Institutions Code section 6608].

[116] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 25, page 19 [Proposed amendments to Welfare and Institutions Code section 6600.1].

indeterminate commitment provided for under amended section 6604 without amendment.[117]

Of the provisions of Proposition 83 amending the Penal Code and the Welfare and Institutions Code relating to SVP commitments, only the following were *not* first made by SB 1128, but were imposed *solely* by Proposition 83:

- Penal Code section 3000, describing the tolling of parole during an SVP commitment and the terms of parole, is structured differently in SB 1128 and Proposition 83, but mostly appears to produce the same results, based on the plain language;[118]
- Welfare and Institutions Code section 6600(a)(1), reducing the number of victims of qualifying offenses required to meet the definition of a sexually violent predator from *two* victims, to *one*; and subdivision (g) and paragraph (g)(2), removing the ceiling on prior juvenile adjudications ("no more than one") that may be counted against an alleged sexually violent predator, and eliminating the limitation that sex offenses against children must involve "substantial sexual conduct;"[119]
- Welfare and Institutions Code section 6605 previously required DMH to provide annual notice to each SVP of his or her right to petition for release, and if the person did not affirmatively waive his or her right, the court was required to set a show cause hearing. The Proposition 83 amendments to section 6605 require DMH to file an annual report with the court, which includes "consideration of whether the committed person currently meets the definition of a sexually violent predator." If DMH determines that the person either no longer meets the definition of an SVP, or that conditional release to a less restrictive alternative is in the best interest of the person and the community can be adequately protected, the director of DMH "shall authorize the person to petition the court" for conditional release or unconditional discharge.[120]

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[117] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 28, page 20 [Proposed amendments to Welfare and Institutions Code section 6604.1].

[118] Compare Statutes 2006, chapter 337 (SB 1128), section 45 with Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 17, page 16 [Both amendments to Penal Code section 3000 provide for tolling of parole during civil commitment, but SB 1128 provides that tolling shall begin during the person's evaluation to determine whether the person is an SVP; in addition, both amendments provide for a ten year term of parole for persons sentenced to life under Penal Code sections 667.61 and 667.71 (sentence enhancements for prior sex offenses), SB 1128 also provided for a ten year term of parole for persons receiving a life sentence under section 209(b) (kidnapping with intent to commit certain violent felonies, including rape); 269 (aggravated sexual assault of a child); and 288.7 (felony sexual intercourse, sodomy, oral copulation with a child under 10 years of age, by a person over 18 years of age, carries a life sentence).].

[119] Compare Statutes 2006, chapter 337 (SB 1128), section 53 with Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 24, pages 18-19.

[120] Compare Statutes 2006, chapter 337 (SB 1128), section 57 with Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 29, page 20. Notwithstanding

So although the voters may have believed (and were informed by the ballot materials prepared by the Attorney General, which were published on August 7, 2006) that they were adopting the other substantive amendments to the SVP program and definitions proposed in Proposition 83 (including the broadening of "sexually violent offense[s]" to include certain intent crimes, other forms of rape and sexual assault not covered under prior law, and "threatening to retaliate in the future against the victim or any other person;"[121] and broadening the definition of "conviction"[122]), these changes were *already in effect* pursuant to the enactment of SB 1128 on September 20, 2006, prior to the 2006 general election on November 7, 2006.[123]

C. The Commission's December 6, 2013 Decision on the Request for Mandate Redetermination.

On January 15, 2013, Finance filed a Request for Mandate Redetermination alleging that Proposition 83, approved by the voters in the November 2006 general election, constitutes a subsequent change in law with respect to the *Sexually Violent Predators* program, and that the program is no longer reimbursable pursuant to Government Code section 17556(f).[124]

The Commission partially approved Finance's request on December 6, 2013, and adopted a New Test Claim Decision superseding the prior Test Claim Decision. Specifically, the Commission found that the following activities were no longer reimbursable because they had been expressly included in or were necessary to implement Proposition 83:

> **Activity 1** – 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).)

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the apparent restriction imposed upon a committed person's right to petition for release under section 6605, Proposition 83 left largely untouched section 6608, which provides, in pertinent part: "Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent~~ or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health." Thus, while the sections appear to make changes to the annual duties of DMH with respect to informing committed persons of their rights, the right to petition for release remains relatively intact. (Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 30, page 21.)

[121] Welfare and Institutions Code section 6600(b) (as amended, Stats. 2006, ch. 337 (SB 1128); Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 24, page 19.

[122] Welfare and Institutions Code section 6600(a)(2)(H-I) (as added, Stats. 2006, ch. 337 (SB 1128); Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 24, page 18.

[123] See Elections Code section 9605.

[124] Exhibit A, Finance's Request for Mandate Redetermination.

> **Activity 2** – 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).)
>
> **Activity 3** – Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601(j).)
>
> **Activity 5** – Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
>
> **Activity 6** – 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-d), and 6608(a-d).)
>
> **Activity 7** – 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).)[125]

In addition, the Commission found that activities 4 and 8 remained partially reimbursable, to the extent of costs and activities attendant to statutorily required probable cause hearings for alleged sexually violent predators were not expressly included in or necessary to implement Proposition 83:

> Therefore, the following activities are required as modified, only for probable cause hearings:
>
> **Activity 4-** Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
>
> **Activity 8** – Transportation and housing for each potential sexually violent predator from at a secured facility to the probable cause hearing while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)[126]

The Commission thereafter adopted Amended Parameters and Guidelines consistent with the New Test Claim Decision on May 30, 2014, and a Statewide Cost Estimate on March 27, 2015.

D. The California Supreme Court's Decision Overturning and Remanding the Commission's Decision on the Request for Mandate Redetermination

The County of San Diego, joined by the Counties of Los Angeles, Orange, Sacramento, and San Bernardino, filed a petition for writ of mandate and complaint for declaratory relief in the Superior Court for the County of San Diego seeking a determination that the Commission's New

[125] Exhibit X, *Sexually Violent Predators (CSM-4509)*, 12-MR-01 New Test Claim Statement of Decision, adopted December 6, 2013, page 2.

[126] Exhibit X, *Sexually Violent Predators (CSM-4509)*, 12-MR-01 New Test Claim Statement of Decision, adopted December 6, 2013, page 3.

Test Claim Decision was incorrect as a matter of law and should be vacated.[127] The case proceeded to the California Supreme Court, and after briefing and oral argument, the Supreme Court rejected the Commission's reasoning and findings and granted the writ of mandate.[128]

The California Supreme Court began its consideration of Proposition 83 and the Commission's decision on the Request for Mandate Redetermination with a summary of the competing legal principles at play:

> To resolve the question before us, we must consider four distinct legal principles. First, the state must reimburse local governments for the costs of discharging mandates imposed by the Legislature. Second, this reimbursement requirement does not apply to those activities that are necessary to implement, or are expressly included in, a ballot measure approved by the voters. Third, a statute must be reenacted in full as amended if any part of it is amended. And fourth, the Legislature is prohibited from amending an initiative statute unless the initiative itself permits amendment.[129]

Beginning with article XIII B, section 6 and Government Code section 17556, the Court acknowledged that "the state must reimburse local governments for mandates imposed by the Legislature, but not for mandates imposed by the voters themselves through an initiative."[130] Thus, "[w]here the Legislature cannot use the ordinary legislative process to amend or alter duties imposed by the voters (see Cal. Const., art. II, § 10, subd. (c)), it can no longer be reasonably characterized as the source of those duties."[131]

However, the Court continued by stating that not every word printed in the body of an initiative falls within the scope of the statutory terms "expressly included" in a ballot measure:

> The question left unresolved by these provisions is what, precisely, qualifies as a mandate imposed by the voters. Government Code section 17556, subdivision (f) exempts from reimbursement only those "duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters." The boundaries of this subdivision depend, then, on the definition of a "ballot measure" in section 17556. Our reading of the provision's text, the overall statutory structure, and related constitutional provisions persuades us that not every single word printed in the body of an initiative falls within the scope of the statutory terms "expressly included in…a ballot measure."[132]

The Court noted that Proposition 83 "reenacted verbatim" the provisions of Welfare and Institutions Code section 6601, 6605, and 6608 that the Commission had previously identified as

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[127] Exhibit X, Petition and Complaint, Case No. 37-2014-00005050-CU-WM-CTL, County of San Diego et al.

[128] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

[129] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206.

[130] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 207.

[131] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 207.

[132] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 207-208.

imposing mandated activities. The changes that were made to these sections, the Court held, were minor, and non-substantive: "Whatever else Proposition 83 accomplished, it effectively left undisturbed these test claim statutes and the various mandates imposed therein."[133]

The Court therefore rejected the Commission's reasoning that amending and reenacting the relevant sections wholesale within the ballot measure was sufficient to satisfy the "expressly included in" prong of section 17556. Instead, the Court held: "Statutory provisions that are not actually reenacted and are instead considered to 'have been the law all along' cannot fairly be said to be *part of* a ballot measure."[134] Rather, the Court held: "The mere happenstance that the mandated duties were contained in test claim statutes that were amended in other respects not germane to any of the duties – and thus had to be reenacted in full under the state Constitution – should not in itself diminish their character as state mandates."[135]

The Court went on to address the State's argument that, based on Proposition 83's amendment clause, the "compelled reenactment of the test claim statutes transformed the state mandate into a voter-imposed mandate because the voters *simultaneously* limited the Legislature's ability to revise or repeal the test claim statutes."[136] The court explained the amendment clause as follows:

> The strict limitation on amending initiatives generally — and the relevance of the somewhat liberalized constraints imposed by Proposition 83's amendment clause — derive from the state constitution. Article II, section 10, subdivision (c) of the California Constitution provides that an initiative statute may be amended or repealed only by another voter initiative, "unless the initiative statute permits amendment or repeal without the electors' approval." The evident purpose of limiting the Legislature's power to amend an initiative statute "'is to "protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent."'" (*Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597 (*Shaw*).) But we have never had occasion to consider precisely "what the people have done" and what qualifies as "undoing" (*ibid*.) when the subject is a statutory provision whose reenactment was constitutionally compelled under article IV, section 9 of the Constitution.[137]

The Court, however, disagreed with the State's assumption that because of article II, section 10(c), "none of the technically restated provisions may be amended, except as provided in the initiative's amendment clause."[138] If that were the case, then all of the nine subsequent

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[133] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 208.

[134] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 209-210 (emphasis added) (citing *Vallejo etc. R. R. Co. v. Reed Orchard Co.* (1918) 177 Cal. 249, 255).

[135] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 210.

[136] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211 (emphasis in original).

[137] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211.

[138] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211.

legislative amendments to the test claim statutes technically restated in Proposition 83, as identified by the amicus parties, would be unconstitutional.[139]

The Court distinguished *Shaw*, on which the State relied, saying, "that case analyzed a legislative amendment aimed at the heart of a voter initiative, not a bystander provision that had been only technically restated."[140]

> By contrast, nothing in Proposition 83 focused on duties local governments were already performing under the SVPA. No provision amended those duties in any substantive way. Nor did any aspect of the initiative's structure or other indicia of its purpose suggest that the listed duties merited special protection from alteration by the Legislature….Indeed, no indication appears in the text of the initiative, nor in the ballot pamphlet, to suggest voters would have reasonably understood they were restricting the Legislature from amending or modifying any of the duties set forth in the test claim statutes. Nor is an overbroad construction of article II, section 10 of the California Constitution necessary to safeguard the people's right of initiative. To the contrary: Imposing such a limitation as a matter of course on provisions that are merely technically restated would unduly burden the people's willingness to amend existing laws by initiative.[141]

The Court held that a "more prudent conclusion" was to interpret article II, section 10 and the Amendment Clause more narrowly, and on that basis the Court announced the following rule:

> When technical reenactments are required under article IV, section 9 of the Constitution – yet involve no substantive change in a given statutory provision – the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process. This conclusion applies *unless* the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute.[142]

In other words, a provision only technically restated, without amendment, in a ballot measure should not be considered a voter-imposed mandate merely by virtue of its restatement within the initiative "*unless* the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute."[143] Therefore, where the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute, the provision is reasonably necessary to implement the Proposition although it is

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[139] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211.

[140] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 212.

[141] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 213-214.

[142] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 (emphasis in original).

[143] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 (emphasis in original).

not "expressly included" in it within the meaning of Government code section 17556(f). This is so because any other interpretation would thwart the will of the people.

Here, the Court noted that Finance "offer[s] no reason – putting aside for the moment the expanded SVP definition – why these restated provisions should be deemed integral to accomplishing the initiative's goals. Nor have they identified any basis for believing that it was within the scope of the voters' intended purpose in enacting the initiative to limit the Legislature's capacity to alter or amend these provisions."[144] Thus, the court concluded that the Commission erred in its finding that those provisions were expressly included in a ballot measure approved by the voters merely because they were restated in the initiative's text, and therefore transformed into mandates of the voters.[145]

The Court then addressed the Commission's findings that the remaining procedures required by the test claim statutes (those that were not restated in the ballot measure) were necessary to implement the ballot measure because they were "indispensable to the implementation of other provisions that – according to the Commission – were 'expressly included' in Proposition 83."[146]

In analyzing that question, the Court considered the State's argument that the expansion of the "definition" of an SVP under section 6600 might be held to impose a voter mandate and noted that Proposition 83 expanded the definition of an SVP in two ways:

> [T]he voters broadened the definition of an SVP within the meaning of Welfare and Institutions Code section 6600 in *two ways*. First, they reduced the required number of victims, so that an offender need only have been 'convicted of a sexually violent offense against one or more victims," instead of two or more victims. Second, the voters eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction.[147]

In this respect, the State contended that the test claim duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform any duties for this class of offenders until the voters by initiative expanded the definition of an SVP.[148]

The Court went on to observe:

> None of the specified local government duties is triggered until an inmate is identified as someone who may be an SVP. (See §§ 6601, 6603, 6604, 6605, 6608.) Although the SVP definition does not *itself* impose any particular duties on local governments, it is necessarily incorporated into each of the listed activities. Indeed, whether a county has a duty to act (and, if so, what it must do)

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[144] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214-215.

[145] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 215.

[146] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 215.

[147] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216 ([emphasis added] citing Welfare and Institutions Code section 6600(a; g), as amended by Proposition 83 (Nov. 2006).

[148] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

> depends on the SVP definition…When more people qualify as potential SVPs, a county must review more records. It must file more commitment petitions, and conduct more trials. One can imagine that if the roles were reversed — i.e., if the Legislature expanded the scope of a voter-created SVP program — the Counties would be claiming that the burdens imposed by the expanded legislative definition constituted a state mandate.[149]

On this basis, the Court remanded the matter to the Commission, stating:

> Unfortunately, the Commission never considered whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties. Its ruling granting the State respondents' request for mandate redetermination instead rested entirely on grounds that we now disapprove. Moreover, the parties admit — and the Court of Appeal found — that the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments….Under the circumstances, we find it prudent to remand the matter to the Commission to enable it to address these arguments in the first instance.[150]

Accordingly, the case was remanded to the Superior Court, which issued a modified judgment and writ, directing the Commission to rehear Finance's request in a manner consistent with the opinion of the California Supreme Court.[151]

III. Positions of the Parties and Interested Person

A. Department of Finance, Requester

Finance's response to the Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand argues that the voters, by adopting Proposition 83 "materially expanded" the definition of a sexually violent predator, "and directed that the Legislature could not narrow or repeal that definition through its ordinary legislative process."[152] Finance argues that "[t]he source of that expanded definition is now the voters," and "[a]fter that expansion, the costs incurred by local governments in complying with the Sexually Violent Predators mandate flow from Proposition 83 and are 'necessary to implement' the ballot measure for purposes of Government Code section 17556, subdivision (f)."[153] Specifically, Finance asserts:

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[149] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216-217.

[150] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[151] Exhibit D, Notice of Entry of Judgment, Judgment, and Writ of Mandate, San Diego Superior Court, Case No. 37-2014-00005050-CU-WM-CTL, served June 5, 2019, page 17.

[152] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 1.

[153] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 1.

> In adopting Proposition 83, the voters expanded the definition of "sexually violent predator" in several ways. First, they reduced the required number of victims, so that the offender must have "been convicted of a sexually violent offense against one or more victims," as opposed to "two or more" in the original statute. (Welf. & Inst. Code, § 6600, subd. (a)(1).) Second, the voters expanded the set of crimes that qualify as a "sexually violent offense," adding any felony violation of Penal Code section 207 (kidnapping), section 209 (kidnapping for ransom, reward, or extortion, or to commit robbery or rape), or section 220 of the Penal Code (assault to commit mayhem, rape, sodomy, or oral copulation), committed with the intent to commit another enumerated "sexually violent offense." (Welf. & Inst. Code, § 6600, subd. (b).) Third, the voters directed that if an offender had a prior conviction for which he "was committed to the Department of the Youth Authority pursuant to [Welfare and Institutions Code] Section 1731.5," or that "resulted in an indeterminate prison sentence," that prior conviction "shall be considered a conviction for a sexually violent offense." (Welf. & Inst. Code, § 6600, subd. (a)(2)(H), (I).)[154]

Finance argues that "[t]his expansion of the category of people who would be subject to the SVPA process was a central purpose of Proposition 83."[155] Finance points to section 2 of Proposition 83, which states that the existing SVPA "must be strengthened and improved," and section 31, which states "[i]t is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders."[156] Finance also relies on statements in the Voter Guide relating to expanding the definition of a sexually violent predator and making more offenders eligible for SVP commitment.[157]

Further, Finance asserts that "[t]he voters also insulated these definitional changes from legislative repeal or revision," with section 33 of Proposition 83, which states that "[t]he provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote…two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters."[158] Finance concludes that "the

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[154] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, pages 1-2.

[155] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[156] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[157] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[158] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2; Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 33, page 21.

Legislature cannot modify the SVPA through its normal legislative process to revert to the definition of 'sexually violent predator' that existed before Proposition 83.[159]

Finance then argues that all of the costs and duties of the SVPA "flow from the definition of 'sexually violent predator.'"[160] Finance states that "[t]he entire purpose of the SVPA is to provide a mechanism for processing and, where appropriate, civilly committing the category of offenders defined as 'sexually violent predators.'"[161] Finance concludes: "Regardless of the number of offenders processed by local governments in a particular year, it is not disputed that the voters expanded the category of offenders who 'shall' be referred to local governments as a part of the SVPA process…All those offenders are now referred to local governments at the direction of the voters – not the Legislature."[162]

B. County of Los Angeles

The County of Los Angeles argues that Finance has not met its burden under Government Code section 17570. The County asserts that "DOF's argument is conclusory in stating that because the voters 'are the source' of the expanded definition of Prop. 83, that the state is no longer financially responsible for reimbursing such costs."[163] Accordingly, the County argues that "DOF has failed to make a showing that the state's liability…has been modified based on a subsequent change in law."[164]

The County argues that the expanded definition of a sexually violent predator did not transform the test claim statutes into a voter-imposed mandate:

> The definition of an SVP has always involved a two part process. First, an individual must have been convicted of a crime involving sexual violence. A second component is that an individual "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." Prior to Proposition 83, WIC section 6600 defined a SVP as an individual who had been convicted of two or more qualifying sexually violent offenses. The passage of Proposition 83 resulted

[159] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[160] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[161] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 3.

[162] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 3.

[163] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 3.

[164] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 3.

> in the reduction of the qualifying offense to one or more. However, Proposition 83 left unchanged the mental disorder component of the SVP definition.[165]

The County also notes that "DOF ignores the legislature's own expansion of the SVP definition in SB 1128." The County asserts that "[w]hile it is true that Proposition 83 expanded the set of crimes that qualify as 'sexually violent offenses'…it avoids the fact that the legislature in enacting SB 1128, prior to the passage of Proposition 83, had already expanded the SVP definition to include those offenses."[166] The County goes on to assert that "DOF incorrectly states that 'it is undisputed that the voters expanded the category of offenders who "shall" be referred to local governments as part of the SVPA process.'"[167] The County again explains that a person is not deemed an SVP based on "simply whether they have committed one or more qualifying offenses, there is also a mental evaluation component." The County argues that Finance's statement that "all those offenders are now referred to local governments at the direction of the voters" is inaccurate: "This statement misconstrues the SVP identification process by suggesting that Proposition 83 automatically resulted in referrals being generated, giving no consideration to the second prong which involves mental health diagnoses."[168]

Finally, the County argues that the expanded definition of an SVP pursuant to Proposition 83 did not result in an increase in referrals to local governments. The County again argues that the mental health diagnosis is critical, and that the average annual number of petitions actually decreased after Proposition 83:

> CDCR's primary role in the SVP identification process was to refer only those prisoners that had the requisite prior convictions. The expanded definition in Proposition 83 resulted in an increase in the number of referrals from CDCR to [the Department of State Hospitals]. (See Table 3 of the July 2011 California State Audit on the Sex Offender Commitment Program, "SVP Audit"). Although the number of individuals screened by CDCR and DSH increased, the number of referrals to local government did not increase as expected. In Los Angeles County, the average annual number of referrals from DSH to the Los Angeles District Attorney's Office was 32.9 cases from 1996-2006. The average annual number of referrals after the passage of Proposition 83 was 23.5 cases.[169]

The County cites a "Dr. Brian Abbott, a psychologist who has conducted over 500 SVP evaluations since 2002," and who offers that the most common diagnosis leading to an SVP

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[165] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 3.

[166] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, pages 3-4.

[167] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 4.

[168] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 4.

[169] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 5.

designation is one that requires a pattern of behavior and an inability to control impulses or urges, which manifests over a period of months.[170] Dr. Abbott contends that this diagnosis must be established through a pattern of conduct, because a person subject to evaluation "typically [would] not reveal information about their sexual urges and fantasies." And thus, the reduction from two offenses to one means that it is more difficult to establish that pattern for a substantial number of cases referred from CDCR to DSH for evaluation.[171] The County of Los Angeles data, which breaks down its referral data by year, however, indicates an initial spike in referrals after the 2006 amendments in 2007 (46) and 2008 (44), up from an average of just under 30 per year in the five years prior.[172] And, like several other counties, the county notes that it does not file petitions on all referrals received. Rather, although it received 45 referrals in 2011, it filed petitions on just 30 of those referrals.[173]

C. County of Orange

The County of Orange also argues that Finance has not met its burden: "On March 26, 2019, the DOF submitted its comments, which cited no evidence regarding whether, and to what extent, the number of referrals to local governments was affected by Proposition 83's expanded SVP definition."[174] The County further argues:

> Given that the Supreme Court has already opined that the current record is insufficient to establish that such a change resulted from the simple expansion of the SVP definition, the DOF needed to create a record and provide evidence of the practical effects and costs flowing from this change. By declining to do so, it failed to meet its burden.[175]

The County argues that in Finance's Comments, it "asserted that the new SVP definition expanded the 'category of people' who could be subject to the SVP protocols and, therefore, the costs relating to previously state-mandated duties now 'flow from' this definition."[176] The County argues that "[t]his assertion is completely meaningless in the absence of any data

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[170] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, pages 6; 14-17.

[171] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, pages 6; 14-17.

[172] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 10.

[173] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 10.

[174] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 2.

[175] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 2.

[176] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

demonstrating that the change in definition had anything other than a de minimis effect on referrals to local governments."[177]

The County argues that Proposition 83 did "nothing" to transform the test claim statutes into a voter-imposed mandate.[178] The County states that "[h]ad Proposition 83 failed, the fundamental burdens of the SVPA protocols would still exist…" and that "Proposition 83 merely asked voters whether they wanted to amend the act in a limited manner and recited a large portion of the remaining statutory scheme to provide the voters with context to guide their decision."[179] The County asserts that "[i]n particular, changes to the SVP definition resulting from Proposition 83 did not require local entities to perform new services or provide a higher level of service."[180] The County acknowledges that "[w]hile the Supreme Court acknowledge [sic] the possibility that the definitional change might, as a practical matter, modify legal duties or significantly increase the burdens of those duties, the DOF has presented no evidence that this actually happened."[181] The County, on the other hand, provides evidence that from 2000 through 2006, it filed an average of 4.43 commitment cases per year, while from 2007 through 2018, the average dropped to 3.42 cases per year.[182] The county does not provide a break down by whether there were one or two victims or provide any annual data that might show an overall trend.

D. County of Sacramento

The County of Sacramento argues that Proposition 83 does not constitute a voter-imposed mandate because, "[i]n short, the reimbursable activities have not changed since Jessica's Law was adopted by the voters."[183] The County asserts that "[t]he constitutionally compelled reenactment of the unaltered test claim statutes cannot be construed as a decision by the voters to impose duties that the ballot measure did not add or amend."[184] The County also notes that "the

[177] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

[178] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

[179] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

[180] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

[181] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 4.

[182] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, pages 5, 51.

[183] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 2.

[184] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 2.

Department of Finance in their March 22, 2019 comments failed to provide evidence as to this issue and has not met its initial burden of proof."[185]

In addition, the County submits evidence that, as a practical matter, "since the passage of Jessica's Law, the number of referrals has actually decreased state-wide."[186] The County cites a 2011 report from the California State Auditor, which shows a temporary increase in the number of referrals, petitions, and commitments in the first two years after Proposition 83, followed by a significant decrease.[187] The County states: "Sacramento County's statistics are similar to state-wide statistics." In 2007 and 2008, the County experienced a significant increase in petitions filed, but all had more than one victim, and therefore were not part of the population of potential SVPs brought within the coverage of the SVP program by Proposition 83. Since 2008, the County asserts, "the total number of petitions filed has steadily dropped, and there have never been more than three single-victim petitions filed in a year."[188] The County further states that "[t]he District Attorney has located at least four referrals for which a petition was not filed, and several that were dismissed either prior to or shortly after the probable cause hearing."[189] The County concludes: "Regardless, the change in law did not increase the number of referrals to Sacramento County and in fact appears to have greatly reduced the number of referrals and certainly the number of petitions filed."[190] The County submits a declaration from Brian Morgan, of the Sacramento County District Attorney's office, which includes a year-by-year breakdown of the number of petitions filed, and how many of those were based on only an offence against a single victim and how many on an offence against more than one victim.[191] That data shows a spike from 2006 to 2008 of SVP filings with more than one victim. [192] Then

[185] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 2.

[186] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 2.

[187] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 2.

[188] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 3.

[189] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 3.

[190] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 3.

[191] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

[192] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

from 2009 to 2019 it shows that there was a significant reduction of total filings and that about 30 percent of the filings that there were (15 out of a total of 50) were with a single victim. [193]

E. County of San Bernardino

The County of San Bernardino states that it "objects to the Commission's request for comments at this time."[194] The County asserts that Finance should be required to first establish "its legal and factual basis for its redetermination request."[195] The County argues that "[o]nly after DOF has met this burden should interested parties be required to submit comments," and "[s]ince the DOF has not set forth a factual basis for seeking redetermination, the County of San Bernardino hereby reserves the right to submit further data regarding specific SVP cases, should the Commission find that DOF has met its initial burden."[196]

The County argues that Proposition 83 "modified the SVP criteria by decreasing the number of victims from two to one," but that "this change is de minimis when compared to the overall SVP program and did not relieve the counties of their preexisting state mandated activities…"[197]

The County asserts that there is no significant statistical increase in SVP filings and that "[t]he likely reason…is because the offender is still required to be diagnosed with a mental disorder and such diagnoses require demonstration of a pattern of behaviors, fantasies or urges that have occurred for at least six months, which would be difficult to obtain in a case with a single victim."[198] In other words, even though the number of underlying offenses needed was reduced, the fact that an individual still must be diagnosed with a "congenital or acquired condition affecting the emotional or volitional capacity that pre-disposes the person to the commission of criminal sexual acts" means that the population of potential SVPs is not significantly increased due to the relatively high burden of the final criterion.[199] Finally, the County asserts that its data is "[s]imilar to the statewide data trend," in that it has declined generally in the years following Proposition 83: "[t]he data available at this time…indicates that prior to Jessica's Law, 2002 to

[193] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

[194] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 1.

[195] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 2.

[196] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 2.

[197] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 2.

[198] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 3.

[199] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 3.

2006, the average number of SVP filings countywide was 9.2 per year."[200] The County states that "[a]fter Jessica's Law passed, 2007, to 2018, the average number of SVP filings countywide was 6 per year."[201] The county does not provide a break down by whether there were one or two victims or provide any annual data that might show an overall trend.

F. County of San Diego

The County of San Diego argues that Finance has the initial burden to demonstrate that the expanded definition of a sexually violent predator constitutes a subsequent change in law, and that it has not yet met that burden. The County cites Government Code section 17570(d), and section 1190.1(c) of the Commission's regulations, which require a detailed analysis and narrative, signed under penalty of perjury, demonstrating how and why the State's liability for mandate reimbursement has been modified by a subsequent change in law.[202] The County notes that "[t]he question presented in the DOF's 2013 request – whether the reenactment of SVPA provisions in Proposition 83 constituted a subsequent change in law…was resolved by the Supreme Court in 2018." The County argues that "[b]ecause the Supreme Court rejected the only basis asserted by DOF in its request for redetermination, its pending request is facially deficient."[203]

The County goes on to argue that Finance's Comments, filed March 22, 2019, are conclusory and "unsupported by any factual analysis."[204] The County argues that Finance failed to provide any data or evidence regarding the effect of Proposition 83 on the number of referrals to local government, and that "while *in theory*, the expanded definition could result in more referrals, as further discussed below, the actual facts presented in the State's own audit demonstrates that, *in reality*, the 'expanded definition' has not resulted in a sustained number of higher referrals being made to local governments."[205] The County continues:

> The State's own audit indicates that the "expanded definition" of SVP has had, at most, a nominal effect on the number of referrals to counties, and thus it can't be said that the definitional changes so altered the duties imposed on local governments that the source of all those duties now derives from the voters as opposed to the Legislature. Additionally, as noted by the Sacramento County District Attorney's Office in its March 26, 2013 letter to the Commission: "The

[200] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 4.

[201] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 4.

[202] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, pages 2-3.

[203] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 3.

[204] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 4.

[205] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 4.

> legislature chose to have these civil proceedings handled by the local entities. It can remove that requirement from the local entities if it so chooses…" The fact that there may be limits on the Legislature's ability to narrow the definition of an SVP in a manner that is inconsistent with Proposition 83 is of no moment.[206]

The County goes on to argue that a July 2011 report by the California State Auditor concluded that "while there was a dramatic increase in the number of referrals from the Department of Corrections ("Corrections") to the state Department of Mental Health ("Mental Health") after Senate Bill 1128 became law and the voters passed Prop. 83, there was only a brief uptick in the number of referrals to local designated counsel in 2006 through 2008, after which the number of referrals dropped to the pre-Proposition 83 levels."[207] The County also cites the following from the 2011 California State Auditor's report:

> Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism.[208]

The County states that it has requested data from the Department of State Hospitals on the number of referrals to designated counsel, both in the County of San Diego and statewide, for the years 1996 through 2018: "Since the DOF has not set forth a factual basis for seeking redetermination, the County hereby reserves the right to submit further data should the Commission find that DOF has met its initial burden."[209] In subsequent Late Comments on the Request for Mandate Redetermination on Remand, the County of San Diego submitted data obtained from the Department of State Hospitals, which show a small increase in the number of referrals from State Hospitals to counties, and specifically to the County of San Diego, between 2006 and 2007, the year of and the first full year after both Proposition 83 and Senate Bill 1128

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[206] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 5.

[207] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 5.

[208] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, pages 5-6 (quoting *Sex Offender Commitment Program*, California State Auditor, July 2011 Report, page 15 [See Exhibit X]).

[209] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 6.

became law.[210] However, the same data show that over the next several years after the adoption of Proposition 83, those referrals, both statewide and in the County steadily declined, and have remained well below pre-Proposition 83 levels.[211]

Finally, with respect to the changes to the definition of a sexually violent predator, the County argues that the program, "and the duties it imposes on local governments, would have remained in place whether or not Proposition 83 had been approved by the voters."[212] The County argues that "Proposition 83 could only be said to have 'transformed' these duties from obligations imposed by the State to obligations imposed by the voters, if the definitional changes to SVP fundamentally changed the operation of the SVP program as it pertains to local governments."[213] The County argues that "[t]o the extent there exists a small population of offenders who would not have otherwise been eligible for commitment under the SVPA but for Jessica's Law, the County contends the added costs incurred by the County in fulfilling its duties with respect to these offenders should nonetheless be reimbursed as part of the SVP program established by the Legislature."[214] The data provided by the county does not provide a break down by whether there were one or two victims for the referrals that were made.

G. Office of the Los Angeles District Attorney

The District Attorney for the County of Los Angeles argues that the expanded definition of an SVP did not alter the duties performed by the counties, but instead only expanded the number of possible cases that could be referred.[215] However, the District Attorney also asserts that the greater burden of the expanded definition is borne by the state agencies implementing the SVPA.[216] The state entities "conduct multiple levels of screening," and "[t]he vast majority of cases considered by the Department of State Hospitals are not referred to the DA for filing of an SVP petition."[217] The District Attorney submits annual statistics for the number of SVP

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[210] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination on Remand, pages 2; 4.

[211] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination on Remand, pages 2; 4.

[212] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 6.

[213] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, page 6.

[214] Exhibit K, County of San Diego's Comments on the Request for Mandate Redetermination on Remand, pages 6-7.

[215] Exhibit L, Los Angeles County District Attorney's Office's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[216] Exhibit L, Los Angeles County District Attorney's Office's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[217] Exhibit L, Los Angeles County District Attorney's Office's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

referrals, which show a spike in referrals in 2007 (46) and 2008 (44) referrals followed by a general decline thereafter, except for another one-year spike in 2011 (45).[218]

IV. Discussion

Under Government Code section 17570, the Commission may consider a request to adopt a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state's liability. As relevant to this case, a "subsequent change in law" is defined as "a change in law that requires a finding that an incurred cost . . . is not a cost mandated by the state pursuant to [Government Code] Section 17556."[219] If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.[220]

The Department of Finance filed this request for a new test claim decision in accordance with Government Code section 17570, contending that the test claim statutes in the *Sexually Violent Predators*, CSM-4509 program impose duties that are necessary to implement or are expressly included in Proposition 83, adopted by the voters on November 7, 2006, in accordance with Government Code section 17556(f). Government Code section 17556(f) states that the Commission shall not find "costs mandated by the state" when

> (f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Therefore, the issue before the Commission is whether Proposition 83 constitutes a subsequent change in law that modifies the state's liability for the *Sexually Violent Predators*, CSM-4509 program.

Pursuant to the court's Judgment and Writ, the Commission is required to consider, on remand "whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties."[221]

The Court remanded this matter to the Commission ". . . so that it can determine, in the first instance, whether and how the initiative's expanded definition of an SVP may affect the state's obligation to reimburse the Counties for implementing the amended statute."[222]

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[218] Exhibit L, Los Angeles County District Attorney's Office's Late Comments on the Request for Mandate Redetermination on Remand, page 3.

[219] Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856).

[220] Government Code section 17570 (Stats. 2010, ch. 719 (SB 856).

[221] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[222] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 201.

A. The Expanded SVP Definition and Other Indicia Support the Conclusion That Voters Reasonably Intended to Prohibit the Legislature from Repealing or Significantly Reducing the Civil Commitment Program for SVPs; However, the Voter Mandate Did Not Impose *Any* New Duties or Activities on Local Government, Nor Did It Require the State To Impose Any Duties or Activities on Local Government. Therefore, the Duties Remain Mandated by the State.

1. The Record Shows That Although the Number of SVP Referrals Has Not Increased Over Time, at Least Some Portion of All New Referrals Since 2006 Are Based on a Single Victim and Those Referrals Are Therefore Triggered by Proposition 83 and Not By the Test Claim Statutes or Other Later Changes in Law.

The Court's direction to the Commission on remand follows the State's argument that "the specified local government duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform any duties for this *class of offenders* until the voters by initiative expanded the definition of an SVP."[223] The Court acknowledged that "[a]lthough the SVP definition does not itself impose any particular duties on local governments, it is necessarily incorporated into each of the listed activities."[224] The Court reasoned that "[n]one of the specified local government duties is triggered until an inmate is identified as someone who may be an SVP…, [w]hen more people qualify as potential SVPs, a county must review more records" and "[i]t must file more commitment petitions, and conduct more trials."[225] However, the court found that the record was insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to counties and, thus, remanded the case back for the Commission to address this argument.[226]

In reference to the "expanded definition," the Court agrees that Proposition 83 broadened the definition of an SVP in the following two ways:

> [T]he voters broadened the definition of an SVP within the meaning of Welfare and Institutions Code section 6600 in two ways. First, they reduced the required number of victims, so that an offender need only have been 'convicted of a sexually violent offense against one or more victims," instead of two or more victims. Second, the voters eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction.[227]

As the court points out, neither SB 1128 nor Proposition 83 changed the duties or the activities that a local government must perform under the SVP program once a referral has been made. And the court did not attribute to Proposition 83 the expansion of the list of underlying offenses

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[223] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[224] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

[225] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[226] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[227] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216 (citing Welfare and Institutions Code section 6600(a; g), as amended by Proposition 83 (Nov. 2006).

that qualify as "sexually violent offense[s]."[228] Those changes were previously in effect with the enactment of SB 1128.[229]

Thus, the question whether Proposition 83 "transformed" the test claim statutes "to the extent the expanded definition incrementally imposed new, additional duties…" must refer to the "*class of offenders*" that would not have been subject to civil commitment as SVPs but for the enactment of Proposition 83; i.e., those individuals convicted of a sexually violent offense against only *one* victim.

In response to the Commission's Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, Finance asserts, without evidence, that all SVP referrals are now as a result of Proposition 83:

> Regardless of the number of offenders processed by local governments in a particular year, it is not disputed that the voters expanded the category of offenders who "shall" be referred to local governments as part of the SVPA process when they adopted Proposition 83 and altered the definition of "sexually violent predator." All those offenders are now referred to local governments at the direction of the voters—not the Legislature. This mandate is now imposed by the voters and is no longer reimbursable by the State.[230]

Thus Finance seems to argue that since the trigger for the mandate is now one versus two offenses, Proposition 83 is the source of the mandate for all referrals as a matter of law, regardless of the number of offenders actually referred to local government as a result of only one offense. However, the court directed the Commission to establish a record to address how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to counties.[231] The number of referrals to counties as a result of Proposition 83 is a question that must be based on evidence in the record.

As described in the Background, the civil commitment process begins when the Department of Corrections refers a potential SVP, at least six months before the person's release date, for screening by the Department of Corrections and the Board of Prison Terms (now the Parole Board).[232] If that screening finds that the person may be an SVP, the statutes require a mental health examination by two qualified psychiatrists or psychologists with the Department of Mental Health (now Department of State Hospitals).[233] The Department of State Hospitals evaluates the person using a standardized assessment protocol developed by the Department, which includes assessing mental disorders and risk factors. The two evaluating professionals must concur that the person is an SVP; but if they do not, a second evaluation by independent

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[228] Welfare and Institutions Code section 6600(b) (Stats. 2006, chapter 337 (SB 1128)).

[229] Statutes 2006, chapter 337, section 53.

[230] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand.

[231] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[232] Welfare and Institutions Code section 6601.

[233] Welfare and Institutions Code section 6601.

professionals outside state government is required.[234] The Department then forwards a request to the county in which the offense occurred for a petition to have the person committed only if the two professionals performing the evaluation find that the person *is* an SVP.[235] If the county's designated counsel concurs with the recommendation, the county counsel or district attorney is required to file a petition for civil commitment.[236]

Several counties submitted argument and evidence regarding the number of SVP referrals to counties, or in some cases petitions for commitment filed by the county, before and after Proposition 83. The evidence does not show a permanent increase in the number of referrals to counties, commitment petitions filed, or commitments imposed following the passage of Proposition 83. Rather, it shows a spike in referrals and petitions in 2007 and 2008, followed by a significant decline in the following years. Some of the counties assert that the decline of referrals and petitions is because the definitional changes made in Proposition 83 did not alter the final, controlling criterion for civil commitment of an SVP – that the potential SVP must also have a diagnosable mental condition that necessitates confinement and treatment.[237] However, as discussed below, a likely cause for the overall decrease in referrals is the change made by Statutes 2006, chapter 337 (SB 1128) from a two-year period of commitment (requiring new SVP commitment every two years) to an indefinite period of commitment. In addition, data from one county shows a number of SVP referrals of persons convicted of a sexually violent offense against one victim in accordance with Proposition 83, though the other counties did not provide breakdowns of whether their referrals were based on an offense against one or more than one victim.

Specifically, the County of Los Angeles asserts, based on the declaration of Deputy District Attorney Jay Grobeson of the Los Angeles County District Attorney's Office, that the county received an average of 32.9 SVP referrals per year from 1996 through 2006 when Proposition 83 was adopted, and an average of only 23.5 per year after 2006.[238] The Los Angeles data in the record shows that after an initial spike in 2007 and 2008 of 44 and 46 SVP referrals respectively, there was in fact a significant decline to an average of 20.75 referrals annually from 2009-2016.[239]

The County of Orange tracks the petitions for commitment filed, stating that the County filed an average of 4.43 commitment cases per year between 2000 and 2006, and an average of 3.42 cases per year between 2007 and 2018 and does not indicate what its numbers were for 2007 and

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[234] Welfare and Institutions Code section 6601.

[235] Welfare and Institutions Code section 6601.

[236] Welfare and Institutions Code section 6601.

[237] See, e.g., Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, pages 4-5.

[238] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, pages 5; 10. See also, Exhibit L, District Attorney for the County of Los Angeles's Late Comments on the Request for Mandate Redetermination on Remand.

[239] Exhibit G, County of Los Angeles' Comments on the Request for Mandate Redetermination on Remand, page 10.

2008 specifically - but does note that the State Auditor found an initial spike overall for those years followed by a decline thereafter.[240]

The County of San Bernardino asserts that the expanded definition based on Proposition 83 "had no discernable [sic] long term effect on the number of SVP filings" in the County: "San Bernardino County has experienced a general decline in SVP filings year over year since the passage of Jessica's Law," though it notes an initial spike in referrals in 2006 and 2007.[241] Supervising Deputy County Counsel Carol A. Greene of San Bernardino County states under penalty of perjury that from 2002 to 2006, the county filed an average of 9.2 SVP petitions per year, while "[a]fter Jessica's Law passed, 2007 to 2018, the average number of SVP filings countywide was 6 per year," but does not break down the number of referrals by year.[242]

The County of San Diego submitted evidence showing that in the years prior to Proposition 83 (from 1996 through 2006), the County received between five and 29 SVP referrals per year.[243] In the years following Proposition 83, through 2018, the County received between one and nine referrals per year, averaging 6.33 per year in 2004-2006. Then in 2007, the first full year of implementation after Proposition 83 was adopted, the County received 12 referrals, nearly double that of the prior three years, but this spike fell off and a general decline in referrals followed.[244] The statewide data the county provided shows a similar trend: a "spike" in referrals in 2007 and 2008 followed by a relatively steady decline (2011 being an apparent outlier[245]).

And the County of Sacramento data shows, after an initial spike in petitions in 2006, 2007, and 2008 (19, 12 and 18, respectively), petitions have steadily declined with fewer petitions filed each year than before Proposition 83.[246] However, the Sacramento County data indicates that

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[240] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, pages 5; 50-51.

[241] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 3.

[242] Exhibit J, County of San Bernardino's Comments on the Request for Mandate Redetermination on Remand, page 3.

[243] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination, page 4.

[244] Exhibit M, County of San Diego's Late Comments on the Request for Mandate Redetermination, page 4.

[245] The reason for the 2011 spike is unclear, however, that does correlate with the last year that Mental Health was authorized to use contracted evaluators. According to the California State Auditor's 2011 report: "our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors." (Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand (July 2011 Report 2010-116), pages 6-49.

[246] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 3-4.

approximately one-third of the petitions it has filed since 2009 were based on a conviction of a sexually violent offense against a single victim and therefore there is evidence in the record that at least some portion of all referrals and petitions are now based on only a single victim.[247]

Some of the counties cited to or attached the California State Auditor's report (Report 2010-116, issued July 2011), which covers a time period before and after Proposition 83 (2005-2010), and tracks the number of mental health screenings and referrals to the counties for civil commitment of SVPs statewide.[248] The audit was focused on the screening and evaluation processes at the California Department of Corrections and Rehabilitation and the Department of Mental Health (now the Department of Corrections and Department of State Hospitals, respectively), which occur before the referral to the county is made.[249] But the audit also acknowledged the changes to the SVPA made by Proposition 83 and Statutes 2006, chapter 337 (SB 1128), and the effect on the population of potential SVPs that must be screened and evaluated.[250] Specifically, it notes that the underlying offense(s) committed is not the only factor or criterion within the "definition" of an SVP: a diagnosable mental condition making the person dangerous to the community is the final, essential criterion, and thus, "despite the increased number of evaluations [conducted by the state], Mental Health recommended to the…[counties] about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law."[251]

There has been no comment from any of the parties, or discussion in the audit, addressing the change in law made by Statutes 2006, chapter 337 (SB 1128) to the term of commitment from two-years to indeterminate, which almost certainly contributed to the spike in petitions in 2007 and 2008, and the subsequent reduction in the number of petitions. Under the SVPA, until it was amended in 2006 by Statutes 2006, chapter 337 (SB 1128), a person determined to be an SVP was committed to the custody of DMH for a period of two years and was not to be kept in actual custody for longer than two years unless a new petition to extend the commitment was filed by the county.[252] And former Welfare and Institutions Code section 6604.1 provided when the initial two-year term of commitment and subsequent terms of extended commitment began.[253] The requirement that a commitment under the SVPA be based on a *currently* diagnosed mental disorder applied to proceedings to extend a commitment under pre-2006 law. Such proceedings

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[247] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

[248] E.g., Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, pages 6-49.

[249] Exhibit X, Sex Offender Commitment Program, California State Auditor, July 2011 Report, page 9.

[250] Exhibit X, Sex Offender Commitment Program, California State Auditor, July 2011 Report, page 13.

[251] Exhibit X, Sex Offender Commitment Program, California State Auditor, July 2011 Report, page 15.

[252] Former Welfare and Institutions Code section 6604 (Stats.1995, ch. 763, § 3, p. 5925).

[253] Former Welfare and Institutions Code section 6604 (Stats.1998, ch. 19, § 5.).

were *not a review hearing or a continuation of an earlier proceeding*.[254] Rather, an extension hearing was a new and independent proceeding at which the petitioner (the county) was required to prove the person meets the criteria of an SVP.[255] The county was required to prove the person *is* an SVP, not that the person *is still* one.[256] Therefore, under pre-SB 1128 law a new commitment was required every two years to hold an SVP in civil commitment. As the Third District Court of Appeal, in 2005, found, "each recommitment requires petitioner independently to prove that the defendant has a currently diagnosed mental disorder making him or her a danger. The task is not simply to judge changes in the defendant's mental state."[257] Statutes 2006, chapter 337 (SB 1128) amended the SVPA to provide that all *new* SVP civil commitments continue indefinitely without the county having to file a petition for recommitment every two years. However, previous two-year commitments were not converted to indeterminate terms under SB 1128 and those SVPs previously committed were entitled to a new civil commitment hearing at the end of their existing two-year term. If recommitted, the subsequent term would now be an indeterminate term.[258] As a result, the subsequent reduction in referrals and petitions reflected in the State Auditor and local government data was likely based, at least in part, on the fact that new commitment hearings are no longer required every two-years for those already committed for an indeterminate term.

As noted, much of the data and evidence in the record, including the State Auditor's report, do not isolate the effects of the amendments to the "definition" of an SVP attributable to Proposition 83, from those attributable to Statutes 2006, chapter 337 (SB 1128). Therefore, it is difficult to tell to what extent the petitions from 2006 to present day are based on only one victim. Nonetheless, the Sacramento County data indicates that approximately one-third of the petitions it has filed since 2009 were based on a single victim and therefore there is evidence in the record that at least some portion of all referrals and petitions are now based on only a single victim.[259]

Therefore, it can be safely said at least some portion of all new referrals since 2006 are based on a single victim and those referrals are therefore triggered by Proposition 83 and not by the test claim statutes or other later changes in law.

2. <u>An Ongoing Program and Policy of Civil Commitment of SVPs Is *Integral* to Accomplishing the Electorate's Goals in Enacting Proposition 83 and Other Indicia Support the Conclusion That Voters Reasonably Intended to Prohibit the Legislature from Repealing or Significantly Reducing the Civil Commitment Program</u>.

As discussed above, the Court directed the Commission to consider, in this remand "whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a

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[254] *People v. Munoz* (2005) 129 Cal.App.4th 421, 429, emphasis in original.

[255] *People v. Munoz* (2005) 129 Cal.App.4th 421, 429, emphasis added.

[256] *People v. Munoz* (2005) 129 Cal.App.4th 421, 430.

[257] *People v. Munoz* (2005) 129 Cal.App.4th 421, 430.

[258] *Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1288; See also footnote 3; See also *People v. Taylor* (2009) 174 Cal.App.4th 920 (in accord on this point of law).

[259] Exhibit I, County of Sacramento's Comments on the Request for Mandate Redetermination on Remand, page 4.

voter-imposed mandate. . ."[260] Finance argues that Proposition 83's expanded definition of an SVP *and* the initiative's Amendment Clause, which prohibits the Legislature from narrowing or repealing "the provisions of this act" through its ordinary legislative process, transforms the mandate as a whole into a voter-imposed mandate. Finance explains its argument as follows:

> This expansion of the category of people who would be subject to the SVPA process was a central purpose of Proposition 83. The voters found in Section 2 of the ballot measure that "existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved." Section 31 of Proposition 83 stated, "It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders." The opening lines of the ballot summary notified voters that one of the ways Proposition 83 would accomplish this goal was by "Expand[ing] [the] definition of a sexually violent predator." The Legislative Analyst also explained that Proposition 83 "generally makes more sex offenders eligible for an SVP commitment" by changing the definition of a sexually violent predator.[261]

Finance further states that:

> The voters also insulated these definitional changes from legislative repeal or revision. Proposition 83 prohibits the Legislature from repealing or narrowing the scope of its provisions "except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." So, the Legislature cannot modify the SVPA through its normal legislative process to revert to the definition of "sexually violent predator" that existed before Proposition 83.[262]

Thus, Finance concludes that the source of the expanded definition is the voters and the costs incurred by counties in complying with the test claim statutes flow from Proposition 83 and are necessary to implement the ballot measure for purposes of Government Code section 17556(f).[263] On that basis, Finance asserts that Proposition 83 constitutes a subsequent change in law, within the meaning of Government Code section 17570, and the State is no longer liable for mandate reimbursement.

The counties disagree, as described above, and contend that the test claim statutes have not been transformed into voter mandates at all. For example, the County of Orange argues:

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[260] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[261] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[262] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[263] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 1.

> Had Proposition 83 failed, the fundamental burdens of the SVPA protocols would still exist as they now exists; [*sic*] Proposition 83's failure would not have changed this. Instead, Proposition 83 merely asked voters whether they wanted to amend the act in a limited manner and recited a large portion of the remaining statutory scheme to provide the voters with context to guide their decision.[264]

Accordingly, the issue here is whether the voters are now the source of the mandated activities.

The Court in *County of San Diego* held that "[w]here the Legislature cannot use the ordinary legislative process to amend or alter duties imposed by the voters (see Cal. Const., art. II, § 10, subd. (c)), it can no longer be reasonably characterized as the source of those duties."[265] And, the Court observed, "[t]he evident purpose of limiting the Legislature's power to amend an initiative statute is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent."[266] But, the Court continued, "we have never had occasion to consider precisely 'what the people have done' and what qualifies as 'undoing' when the subject is a statutory provision whose reenactment was constitutionally compelled under article IV, section 9 of the Constitution."[267]

As discussed above, the Court rejected the Commission's reasoning and findings that the test claim provisions in Welfare and Institutions Code sections 6601, 6604, and 6605, were "expressly included in" the ballot measure, within the meaning of Government Code section 17556(f), merely by virtue of being restated and reenacted within the text Proposition 83 in accordance with article IV, section 9.[268] The Court held instead that "no indication appears in the text of the initiative, nor in the ballot pamphlet, to suggest voters would have reasonably understood they were restricting the Legislature from amending or modifying any of the duties set forth in the test claim statutes."[269] In this respect, the court stated that when technical reenactments [of existing provisions] are required to be included in a ballot measure under article IV, section 9 of the California Constitution – yet involve no substantive change in a given statutory provision – the Legislature in most cases retains the power to amend the restated provision through the ordinary legislative process and, thus, remains the source of the duties.[270] This conclusion applies "*unless* the provision is integral to accomplishing the electorate's goals

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[264] Exhibit H, County of Orange's Comments on the Request for Mandate Redetermination on Remand, page 3.

[265] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 207.

[266] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211 (quoting *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597 [internal quotations omitted].).

[267] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211 (quoting *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597.)

[268] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 215.

[269] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 213-214.

[270] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute."[271]

Thus, in order to determine whether Proposition 83 "transformed" the test claim statutes into a voter-imposed mandate, the Commission must determine the extent to which the Legislature "retains the power to amend [the test claim statutes] through its ordinary legislative process."[272] To make that determination, the Commission must consider the electorate's goals when adopting Proposition 83, and determine whether and to what extent those goals and "other indicia" support a conclusion that the voters reasonably intended to limit the Legislature's ability to subsequently amend the test claim statutes. As described below, the voters were informed by the Ballot Pamphlet, the Legislative Analyst's Office summary, and the text of Proposition 83 itself, that the Proposition would expand the definition of an SVP, and "strengthen and improve the laws that . . . control sexual offenders."[273] And from that, when read in context of Proposition 83's Amendment Clause and article II, section 10 of the California Constitution, it can be inferred that voters intended to preserve and expand the policy of civil commitment of SVPs.

The limitations imposed on the Legislature's authority to amend the SVPA derive from article II, section 10, and the "somewhat liberalized constraints" of the Amendment Clause found in section 33 of Proposition 83.[274] Article II, section 10 of the California Constitution provides that "[t]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval." Proposition 83's Amendment Clause is slightly more permissive with respect to *amendments*, but is silent on *repeal*:

> The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.[275]

Therefore, Proposition 83 itself permits a simple majority vote to enact amendments that "expand the scope" of the provisions of the act or "increase the punishments or penalties."[276] Meanwhile any other amendment of the "provisions of this act" other than to expand the scope or

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[271] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 (emphasis in original).

[272] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214

[273] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, sections 1; 31, pages 10; 21.

[274] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211.

[275] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, sections 33.

[276] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 33.

increase penalties or punishments requires a two-thirds super-majority vote or a statute approved by the voters. Moreover, a complete repeal of the SVPA, or an amendment that substantially undermines the SVPA, would require submitting the question to the voters, pursuant to article II, section 10 and *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577.[277]

The Court does not precisely identify the scope of "the provisions of this act," but holds that if provisions of Proposition 83 were only technically reenacted pursuant to article IV, section 9 (i.e. the reenactment rule which requires reprinting of the entire section (including any unchanged portions) for any amendment), "*and* the Legislature has retained the power to amend the provisions through the ordinary legislative process" those provisions are not within "the provisions of this act."[278] This conclusion applies "*unless* the provision is integral to accomplishing the electorate's goals in enacting the initiative or other indicia support the conclusion that voters reasonably intended to limit the Legislature's ability to amend that part of the statute."[279]

On this basis the Amendment Clause would apply to those provisions substantively and actually amended by Proposition 83, including the definition of an SVP, and any other provision the repeal or narrowing of which would undermine the voter's intent in approving Proposition 83 to "to strengthen and improve the laws that punish and control sexual offenders." Thus, Finance is correct to the extent it argues that "voters also insulated these definitional changes from legislative repeal or revision."[280]

The key to determining whether the voters or the Legislature is the source of the mandate lies in determining whether the expanded definition is *integral* to the electorate's goals in enacting the initiative, or if "other indicia support the conclusion that the voters reasonably intended to limit the Legislature's ability to amend" the test claim provisions.[281]

The Official Title and Summary of Proposition 83 states that the Proposition:

- Increases penalties for violent and habitual sex offenders and child molesters.

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[277] See *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 212-214 (The Court discussed *Shaw* at length, in which the Legislature "sought to undermine the voter-created [transportation] trust fund by adding new provisions to divert those funds from uses the voters had previously designated." The Court characterized this amendment as "alter[ing] the voters' careful handiwork, both the text and its intended purpose," and the Court noted with approval the *Shaw* court's holding that such Legislative "tinker[ing]" was improper and inconsistent with the voters' intent.)

[278] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 ("Imposing such a limitation as a matter of course on provisions that are merely technically restated would unduly burden the people's willingness to amend existing laws by initiative.").

[279] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214 (emphasis in original).

[280] Exhibit F, Finance's Late Comments on the Request for Mandate Redetermination on Remand, page 2.

[281] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

- Prohibits registered sex offenders from residing within 2,000 feet of any school or park.
- Requires lifetime Global Positioning System monitoring of felony registered sex offenders.
- *Expands definition of a sexually violent predator.*
- *Changes current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment*, subject to annual review by the Director of Mental Health and subsequent ability of sexually violent predator to petition court for sexually violent predator's conditional release or unconditional discharge.[282]

The Legislative Analyst's Office's description of the initiative, as relevant to the SVP program, states:

> ***Change SVP Law.*** This measure generally makes more sex offenders eligible for an SVP commitment. It does this by (1) reducing from two to one the number of prior victims of sexually violent offenses that qualify 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.[283]

And, the findings and declarations in the text of Proposition 83 itself states that "existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved."[284]

Thus, Proposition 83 as put before the voters sought amendments to strengthen and improve the laws that control sexual offenders as follows:

- Proposed amendment to section 6000 to *expand* the definition of a sexually violent predator by broadening the underlying criminal offenses supporting a finding that a person is an SVP; by reducing the number of victims of underlying qualifying offenses from two to one; and by removing the ceiling on juvenile offenses applied as qualifying.[285]

[282] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, page 4 (emphasis added).

[283] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, page 6.

[284] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 2(h), page 10.

[285] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, pages 18-19 [Proposed amendments to Welfare and Institutions Code section 6600 (a)(1); (b); (g)].

- Proposed amendment to section 6601 to provide that an SVP determination and commitment shall toll the term of parole for the underlying offense or offenses during indeterminate civil commitment.[286]
- Proposed amendment to section 6604 to provide for indeterminate commitment, and accordingly, to eliminate the requirement to hold a new SVP hearing every two years.[287]
- Proposed amendment to section 6605 to eliminate the requirement that the Department of Mental Health provide annual notice of an SVP's right to petition for release, and eliminate the requirement that the court must hold a show cause hearing if not waived by the committed person. Under amended section 6605, DMH would authorize an SVP to file a petition for release *if* the annual report by DMH finds it appropriate.[288]
- Proposed amendment to section 6608 to provide that even without DMH approval, "nothing in this article shall prohibit" a committed SVP from petitioning for conditional release *or* unconditional discharge. But the section would still prohibit frivolous petitions: if a prior petition was found to be frivolous the court shall deny the petition unless new facts are presented.[289]
- In addition, section 6600.1, not part of the original 1998 test claim decision, nor part of the 1995 and 1996 test claim statutes, was proposed to be amended by Proposition 83 to remove a requirement that sexual offenses against children under 14 must involve "substantial sexual conduct" in order to qualify as sexually violent offenses within the meaning of section 6600(b).[290]
- And, section 6604.1, which also was not included test claim decision or the test claim statutes, was proposed to be amended by Proposition 83 to provide that the indeterminate term of commitment shall commence on the date the court issues the initial order of commitment. Previously (before the circulation of Proposition 83 and enactment of SB 1128) this section provided that a *two-year* term of commitment would begin on the date the court issued the order of commitment, and for subsequent extended commitments, the term would be two years commencing from the date of termination of the previous commitment. This section would have been unworkable and inconsistent with the

[286] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 26 page 20 [Proposed amendments to Welfare and Institutions Code section 6601(k)].

[287] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 27, page 20 [Proposed amendments to Welfare and Institutions Code section 6604].

[288] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 29, page 20 [Proposed amendments to Welfare and Institutions Code section 6605].

[289] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 30, page 21 [Proposed amendments to Welfare and Institutions Code section 6608].

[290] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 25, page 19 [Proposed amendments to Welfare and Institutions Code section 6600.1].

> indeterminate commitment provided for under amended section 6604 without amendment.[291]

As discussed in the Background, many of these proposed amendments were in fact first enacted by Statutes 2006, chapter 337 (SB 1128), which became effective on September 20, 2006, approximately seven weeks before the election in which Proposition 83 was adopted. As a result, those amendments enacted prior to the adoption of Proposition 83 are not, based on their restatement under the reenactment rule alone, expressly included as part of the ballot measure.[292] Thus the Court recognized only two of the four amendments to section 6600 shown in the strikeout and italics text of the ballot measure, which were not amended by SB 1128, as expressly included in Proposition 83:

> [T]he voters broadened the definition of an SVP within the meaning of Welfare and Institutions Code section 6600 in two ways. First, they reduced the required number of victims, so that an offender need only have been "convicted of a sexually violent offense against *one* or more victims," instead of two or more victims. (*Ibid*.; see Welf. & Inst. Code, § 6600, subd. (a)(1).) Second, the voters eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction. (Voter Guide, *supra*, text of Prop. 83, § 24, p. 136; Welf. & Inst. Code, § 6600, subd. (g).)[293]

Nevertheless, the Court directed the Commission to consider the electorate's goals and intent in adopting the initiative, and all of the proposed amendments could be relevant to the voters' understanding of the scope of the initiative, and thus relevant to discerning their goals in enacting the initiative. The Legislature is generally presumed to know the state of the law, but the voters are not necessarily held to the same standard: "Although not deciding the validity of the legislative presumption as it applies to voter initiatives, the Supreme Court has acknowledged there exists [sic] qualitative and quantitative differences between the state of knowledge of informed voters and that of elected members of the Legislature."[294] Here, because SB 1128 and Proposition 83 were enacted so close in time, and because the ballot pamphlet for Proposition 83,

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[291] Exhibit X, November 7, 2006 General Election, Voter Guide Excerpt, Proposition 83, section 28, page 20 [Proposed amendments to Welfare and Institutions Code section 6604.1].

[292] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 209-210, where the court held that "Statutory provisions that are not actually reenacted and are instead considered to 'have been the law all along' . . . cannot fairly be said to be part of a ballot measure within the meaning of Government Code section 17556, subdivision (f)."

[293] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

[294] *McLaughlin v. State Bd. of Educ.* (1999) 75 Cal.App.4th 196, 214 (citing *People v. Davenport* (1985) 41 Cal.3d 247, 263, Fn 6 ["We recognize that in California initiatives are written and enacted without the benefit of the hearings, debates, negotiation and other processes by which the Legislature informs itself of the ramifications of its actions. Thus there may be some basis for the argument that some of the principles which guide courts in their efforts to ascertain the intent of particular statutory provisions enacted through the legislative process may not carry the same force and logic when applied to an initiative measure."].)

including the proposed text, was prepared and circulated before SB 1128 was enacted, the voters, realistically, would have had no way of knowing that these provisions were already in effect. And because each of the proposed amendments appeared in the strikeout and italics of Proposition 83, those provisions would have appeared to voters as entirely new provisions in law. This includes the change from two-year commitments to indeterminate commitments, and the expansion of the list of underlying offenses that qualify as "sexually violent offense[s]."[295] Both of those amendments, first enacted within SB 1128, nevertheless appeared on the face of Proposition 83. Therefore, even though the enactment of SB 1128 in September of 2006 effectively blunted the effects of Proposition 83, any and all provisions that *appeared to be amended* by Proposition 83 could be considered a part of the electorate's goals and intent, including the change from two-year commitments to indeterminate commitments, and the changes in sections 6605 and 6608 addressing the SVP's petitioning for release from commitment.

Therefore, consistent with the amended definition itself, "what the people have done" and what cannot be "undone" through the ordinary legislative process must include a *general intent* that civil commitment of SVPs continue, based on the text of Proposition 83, the legislative intent statement in section 31 of the initiative, the ballot arguments, and other information in the Voter Guide, discussed above. In other words, even if "[t]he provisions of this act," for purposes of the Amendment Clause, does not expressly include each and every provision of the Welfare and Institutions Code that was technically restated in the ballot measure, the electorate's goals in enacting the initiative include the continuance and expansion of civil commitment of SVPs and some of the provisions so restated are integral to accomplishing that goal and other indicia (i.e. the ballot materials) support the conclusion that voters reasonably intended to limit the Legislature's ability to amend those parts of the statute integral to maintaining a civil commitment program. It would therefore be inconsistent with article II, section 10 to *repeal* the SVP program as a whole- leaving only the definition, or to undermine significant portions of the civil commitment policy without submitting the question first to the electorate.[296] Some minor amendments, such as those pointed out by the Court in *County of San Diego*[297] may be permissible, based on the Court's reading of the Amendment Clause. But based on the analysis herein, the Legislature has not retained its ordinary legislative authority to *repeal* or significantly *reduce the scope* of civil commitment, and as such the voters are the source of an ongoing policy of civil commitment of SVPs.

Based on the foregoing, the Commission finds that an ongoing program and policy of civil commitment of SVPs is *integral* to accomplishing the electorate's goals in enacting Proposition

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[295] Welfare and Institutions Code sections 6604; 6600(b) (Stats. 2006, chapter 337 (SB 1128)).

[296] See *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577 (Rejecting legislative amendments that undermined the transportation trust fund created by Proposition 116.)

[297] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 211-212 (E.g., Stats. 2012, ch. 24, and Stats. 2012, ch. 440, which changed "Department of Mental Health" to "Department of State Hospitals" in several instances. These were technical, non-substantive changes, but nevertheless were not consistent with the plain language of Proposition 83's Amendment Clause, which requires a two-thirds legislative majority to amend "the provisions of this act" unless to expand the scope of the act or increase punishments or penalties.).

83, and other indicia (such as the information in the ballot pamphlet) support the conclusion that voters reasonably intended to prohibit the Legislature from repealing or significantly reducing the scope of the civil commitment program.

3. Proposition 83 Does Not Constitute a Subsequent Change in Law that Modifies the State's Liability for the SVP Program Because the Activities and Costs to Implement a Civil Commitment Program in Accordance with the Voter Mandate Have Been Shifted to Counties Based on the State's "True Choice" and, Thus, the Activities and Costs Remain Mandated by the State.

As discussed above, there are no new duties imposed on local government as a result of Proposition 83- even to the extent that Proposition 83 expanded the population to which the mandated activities apply or is now the trigger for those activities for proceedings based on a single victim, the activities required to be performed remain the same as under the original test claim statutes.

To the extent the voters mandated a civil commitment program, and that voter mandate triggers a process that must be provided to implement that program consistent with constitutional due process requirements, there is no indication that the voters required that the process must be provided by *local government*. As the court in *Hayes* explained, when the state shifts costs to local agencies, even if the costs are imposed upon the state by federal law, or in this case a ballot measure, reimbursement under article XIII B, section 6 is required:

> A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (*City of Sacramento v. State of California, supra,* 50 Cal.3d at p. 68.) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.[298]

Similarly, the Court in *Department of Finance v. Commission on State Mandates* (*Stormwater*) held that where the State had a "primary responsibility" for certain inspection requirements under both federal and state law, and "shifted that responsibility" to local governments through its permitting authority, those inspection requirements were not *federal* mandates.[299]

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[298] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594; see also, *Department of Finance v. Commission on State Mandates* (*Stormwater*) (2016) 1 Cal.5th 749, 765, affirming that principle.

[299] *Department of Finance v. Commission on State Mandates* (Stormwater) (2016) 1 Cal.5th 749, 771.

Here, unlike some other states with civil commitment programs for SVPs that provide for the filing of a commitment petition and the prosecution of the case to be handled by a state official rather than by county authorities, California law charges counties with the filing of the commitment petition as well as the prosecution and defense of the petition.[300] In New Jersey, the Attorney General files the petition for commitment and "[t]he Attorney General is responsible for presenting the case for the person's involuntary commitment as a sexually violent predator to the court."[301] Under Florida law, the state has a two tiered system of trial courts: county courts, whose jurisdiction is limited to civil disputes involving $15,000 or less and misdemeanor crimes, and state circuit courts that are organized into 20 judicial circuits and have original jurisdiction over everything else, and each of the 20 state attorneys, rather than a county district attorney or county counsel, is the elected chief prosecutor and handles commitment petitions under the state's SVP law.[302] In Iowa, if the person has not yet been released from confinement, the Attorney General "may file a petition," but if the person has been discharged from confinement, or was acquitted by reason of insanity or held incompetent to stand trial and released, "[a] prosecuting attorney of the county in which the person was convicted or charged, *or the attorney general if requested* by the prosecuting attorney, *may file* a petition…"[303] Similarly, in the State of Washington, a petition may be filed by the prosecuting attorney of the county in which the person was charged or convicted, or by "the attorney general, if requested by the county prosecuting attorney…"[304] In 38 of Washington's 39 counties, SVP petitions and hearings are indeed filed and prosecuted by a team in the Attorney General's office.[305] The legislative history for SB 1128 shows that the California Legislature considered whether the prosecution of SVP cases "should be handled by a single state office (such as the Attorney General) to develop and maintain coordination, expertise and consistency in SVP cases, as has been the case in Washington," as follows:[306]

> In Washington, the Attorney General prosecutes SVP cases in 38 of the 39 counties. SVP cases can thereby be coordinated and streamlined. The Washington SVP prosecutors know the experts and issues in this field very well. Attorneys in the office report that they use discretion in the filing of cases so as to avoid wasting resources.

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[300] Revised Code Washington 71.09.030; Iowa Code 229A.4; Kansas Statutes Annotated 59-29a04.

[301] N.J. Stat. Ann. § 30:4-27.29 (West).

[302] Fla. Stat. Ann. §§ 27.01; 27.02. See Fla. Stat. Ann. § 394.9125 (A "*state attorney* shall refer a person…for civil commitment.").

[303] Iowa Code Ann. § 229A.4 (West)

[304] Wash. Rev. Code Ann. § 71.09.030

[305] Exhibit X, Committee Analysis, SB 1128, Senate Committee on Public Safety, as amended March 7, 2006, pages 36-37.

[306] Exhibit X, Senate Committee on Public Safety, Analysis of SB 1128, as amended March 7, 2006, page 37.

> In California, each county district attorney handles SVP cases arising from that county. Different policies and standards can be followed in each county. Prosecutors and defense attorneys in Los Angeles can develop deep experience and skill in SVP cases, while those in smaller counties may have little experience or skill in these matters. Because of the constitutional right to a speedy trial in criminal cases, district attorneys are very likely to place a priority on felony trials over SVP cases. SVP cases are often delayed for years, producing absurd results.[307]

Although the Legislature in enacting SB 1128 did not shift the filing of civil commitment petitions to the State, it did consider having the State handle the civil commitment petitions as evidenced in the above legislative analysis, though the reasons it chose not to do so are unknown.[308] Other than the test claim statutes themselves, there is no law or evidence in the record to support a finding that the State is compelled to require county district attorneys or county counsels, instead of the Attorney General's Office, to handle the civil commitment petitions for SVPs.[309] The California Constitution recognizes the Attorney General as the government's highest legal official. (Cal. Const., art. V, § 13 ["[T]he Attorney General shall be the chief law officer of the State."].) As such he possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest. [Citations.] ... '[I]n the absence of any legislative restriction, [he] has the power to file any civil action or proceeding directly involving the rights and interests of the state ....' [Citation.]"[310]

Similarly, it is indisputable that a voter-imposed program of civil commitment of SVPs demands indigent defense counsel, experts, and investigators for the defense of the SVP.[311] And here, those duties have been imposed on counties and mandated solely by the test claim statutes. Just as the petition may be filed and an adversarial hearing conducted by a State prosecutor, a

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[307] Exhibit X, Senate Committee on Public Safety, Analysis of SB 1128, as amended March 7, 2006, page 37.

[308] Exhibit X, Senate Committee on Public Safety, Analysis of SB 1128, as amended March 7, 2006, page 37.

[309] See generally, California Constitution, article V, section 13, which describes the State Attorney General as the chief law enforcement officer of the state who has jurisdiction statewide, and holds supervisory authority over each district attorney. In addition, the Constitution provides that "When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office."

[310] *D'Amico v. Board of Medical Examiners (1974)*, 11 Cal.3d, pages 14-15.

[311] *People v. Otto* (2001) 26 Cal.4th 200, 210 (outlining four part test of due process applicable to Sexually Violent Predators Act proceedings); *People v. Fraser* (2006) 138 Cal.App.4th 1430, 1449-1451 (assuming, without deciding, that SVPs have a right to counsel pursuant to the four part test of *Otto, supra*, but holding that there is no right to self-representation); *People v. Dean* (2009) 174 Cal.App.4th 186, 204 ("Here, even though an SVPA proceeding is a civil proceeding, due process requires the provision of a qualified expert for defendant.").

constitutionally adequate defense may be provided by a State defender or an attorney appointed by the court at the State's expense.

Therefore, the activities and costs to implement a civil commitment program consistently with federal constitutional requirements may be "necessary to implement" civil commitment, but have been shifted to counties based on the State's "true choice." In addition, no "other indicia support the conclusion" that the voters specifically intended that *counties* perform these duties.[312] Thus, the State is free to shift the costs back to the State using its ordinary legislative process.[313] The costs imposed on counties by the test claim statutes are *state-mandated*, based on the reasoning of *Hayes v. Commission on State Mandates* and *Department of Finance v. Commission on State Mandates* (*Stormwater*).[314]

Moreover, Finance has produced no argument or evidence to suggest that probable cause hearings, and the activities associated with those hearings, are required for a civil commitment program under Proposition 83. A number of federal and state cases demonstrate that there is substantial latitude in what process is due in civil commitment of mentally ill persons and sexually violent predators (or in some jurisdictions "sexually dangerous persons"), and substantial variation in the due process protections that states and the federal government have chosen to adopt for their programs.[315] As noted above, where a deprivation of liberty is at stake, the courts have generally held that some form of adversarial hearing is required, which includes a right to counsel, and a right to expert witnesses.[316] However, a number of other jurisdictions with similar civil commitment programs do not require probable cause hearings, as noted by the New Jersey Superior Court, Appellate Division, in *In re Commitment of M.G.*[317] And,

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[312] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

[313] See *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594; see also, *Department of Finance v. Commission on State Mandates* (*Stormwater*) (2016) 1 Cal.5th 749, 765, affirming that principle.

[314] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594; *Department of Finance v. Commission on State Mandates* (*Stormwater*) (2016) 1 Cal.5th 749, 765

[315] See *In re Commitment of M.G.* (2000) 331 N.J.Super. 365, 380-383 (describing some of the differences in procedures and statutes for SVP commitment in different states). See also 18 U.S.C. 4241-4248 (The federal SVP statute); *United States v. Sahhar* (1990) 917 F.2d 1197 (upholding civil commitment of mentally ill persons based on federal statute).

[316] *Vitek v. Jones* (1980) 445 U.S. 480, 494-495 (Finding a right to counsel for mentally disordered offenders, furnished by the state); *People v. Otto* (2001) 26 Cal.4th 200, 210 (outlining four part test of due process applicable to Sexually Violent Predators Act proceedings); *People v. Fraser* (2006) 138 Cal.App.4th 1430, 1449-1451 (assuming, without deciding, that SVPs have a right to counsel pursuant to the four part test of *Otto*, *supra*, but holding that there is no right to self-representation); *People v. Dean* (2009) 174 Cal.App.4th 186, 204 ("Here, even though an SVPA proceeding is a civil proceeding, due process requires the provision of a qualified expert for defendant.").

[317] *In re Commitment of M.G.* (2000) 331 N.J.Super. 365, 380-383; N.J. Stat. Ann. § 30:4-27.28 (West); Fla. Stat. Ann. § 394.915 (West) (adversarial probable cause hearing only if judge deems

subsequent to that New Jersey decision, the federal government also instituted civil commitment for "sexually dangerous persons," and the federal statute does not require a probable cause hearing before imposing commitment.[318]

Here, Welfare and Institutions Code section 6602 requires a formal probable cause hearing, and requires the assistance of counsel at that hearing, in excess of federal due process guarantees required for a civil commitment program. The activities and costs associated with this entirely separate hearing exceed the scope of the activities in *San Diego Unified School Dist*. (i.e. "primarily various notice, right of inspection, and recording rules"), which in that case were treated as part and parcel to the underlying federal program since those activities produced incidental and de minimis costs.[319]

Therefore, the activities and costs associated with the probable cause hearings are not necessary to implement voter-imposed civil commitment, but instead are required based on the state's "true choice."[320] Moreover, no "other indicia support the conclusion" that the voters specifically or generally intended that probable cause hearings be included as part of the civil commitment process. Thus, the state is free to eliminate the probable cause hearing using its ordinary legislative process,[321] and the probable cause hearing and the costs associated with it are not necessary to implement Proposition 83 within the meaning of Government Code section 17556(f).

Accordingly, the Commission finds that the Legislature retains substantial discretion with respect to the activities involved in the program, and with respect to how those activities become imposed upon the counties. Based on these and the above findings, the Commission finds that the activities required by the test claim statutes remain mandated by the state and, thus, Proposition 83 does not constitute a subsequent change in law that modifies the state's liability for the *Sexually Violent Predators*, CSM-4509 program.

V. Conclusion

Based on the foregoing, the Commission denies the Request for Mandate Redetermination.

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necessary due to failure to begin trial); 18 U.S.C. 4248 (no probable cause hearing under federal SVP statute).

[318] 18 U.S.C. § 4248.

[319] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 873, footnote 11, and 890.

[320] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593.

[321] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 January 31, 2020, I served the:

- **Draft Proposed Denial of a New Test Claim Decision, Schedule for Comments, and Notice of Hearing issued January 31, 2020**

  Reconsideration of the Request for Mandate Redetermination on Remand
  Sexually Violent Predators (CSM-4509), 12-MR-01-R
  Pursuant to *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196; Judgment and Writ of Mandate Issued by Superior Court for the County of San Diego, Case No. 37-2014-00005050-CU-WM-CTL; Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496)
  As Alleged to be Modified by: Proposition 83, General Election, November 7, 2006
  Department of Finance, Requester

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 January 31, 2020 at Sacramento, California.

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

Matter: Sexually Violent Predators

Requester: Department of Finance

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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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CALIFORNIA
GENERAL ELECTION

Tuesday,
NOVEMBER 7, 2006

CERTIFICATE OF CORRECTNESS

I, Bruce McPherson, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 7, 2006, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 14th day of August, 2006.

Bruce McPherson
Secretary of State

Official Voter Information Guide

SECRETARY OF STATE

Dear California Voter,

There is no greater right than the right to vote — to participate in the electoral process, to elect responsible leaders, and to make your voice heard. As the general election nears, I urge you to exercise this fundamental right on Tuesday, November 7th.

In this Voter Information Guide, you will find information to assist you in making informed choices on Election Day. Impartial analyses, arguments in favor and against thirteen measures, statements from candidates, and other useful information is presented here as your one-stop educational point of reference. These materials are also available on the Secretary of State's website at *www.ss.ca.gov.* The website also provides a link to campaign finance disclosure information (*http://cal-access.ss.ca.gov*) so you can learn who is funding each of the campaigns.

To prepare for Election Day, please carefully review the material in this Voter Information Guide. As a registered voter, you have the opportunity to further strengthen the foundation of our democracy by exercising your right to vote.

Please let my office or your local elections official know if you have questions, ideas, or concerns about registering to vote or voting. To contact the office of the Secretary of State, call our toll-free number—1-800-345-VOTE or visit our website at *www.ss.ca.gov* to find contact information for your local elections official.

Thank you for being a part of California's future by casting your vote in the November 7th General Election.

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Should any candidate or ballot measure information be incorrect or change after the printing of this Voter Information Guide, please rely on the information provided in the Sample Ballot provided by your county elections official.

PROPOSITION
83

SEX OFFENDERS. SEXUALLY VIOLENT PREDATORS. PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY ★★★

Prepared by the Attorney General

SEX OFFENDERS. SEXUALLY VIOLENT PREDATORS. PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING. INITIATIVE STATUTE.

- Increases penalties for violent and habitual sex offenders and child molesters.
- Prohibits registered sex offenders from residing within 2,000 feet of any school or park.
- Requires lifetime Global Positioning System monitoring of felony registered sex offenders.
- Expands definition of a sexually violent predator.
- Changes current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment, subject to annual review by the Director of Mental Health and subsequent ability of sexually violent predator to petition court for sexually violent predator's conditional release or unconditional discharge.

83

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net state prison, parole, and mental health program costs of several tens of millions of dollars initially, growing to a couple hundred million dollars annually within ten years.
- Potential one-time state mental hospital and prison capital outlay costs eventually reaching several hundred million dollars.
- Net state and local costs for court and jail operations are unknown.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Definition of Sex Offenses. Sex offenses are crimes of a sexual nature. They vary in type and can be misdemeanors or felonies. For example, distribution of obscene material is a misdemeanor and rape is a felony sex offense. Felony offenses are more serious crimes than misdemeanors.

Punishment for Committing Sex Offenses. Current law defines the penalties for conviction of sex-related crimes. The punishment depends primarily on the type and severity of the specific offense. Conviction of a misdemeanor sex offense is punishable by up to a year in county jail, probation, fines, or a combination of the three. Conviction of a felony sex offense can result in the same penalties as a misdemeanor or a sentence to state prison for up to a life term. The penalty assigned by the court for a felony conviction depends on the specific crime committed, as well as other factors such as the specific circumstances of the offense and the criminal history of the offender. There are about 8,000 persons convicted of a felony sex offense in California each year. Of these, about 39 percent are sent to state prison. Most of the rest are supervised on probation in the community (5 percent), sentenced to county jail (1 percent), or both (53 percent).

Sex Offender Registration, Residency Requirements, and Monitoring. Current law requires offenders convicted of specified felony or misdemeanor sex crimes to register with local law enforcement officials. There are approximately 90,000 registered sex offenders in California.

Current law bars parolees convicted of specified sex offenses against a child from residing within one-quarter or one-half mile (1,320 or 2,640 feet, respectively) of a school. The longer distance is for those parolees identified as high risk to reoffend by the California Department of Corrections and Rehabilitation (CDCR).

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

The CDCR utilizes Global Positioning System (GPS) monitoring devices to track the location of some sex offenders on parole. Currently, this monitoring is limited to about 1,000 sex offenders who have been identified as high risk to reoffend. Some county probation departments also use GPS to monitor some sex offenders on probation.

Sexually Violent Predators (SVP). Specified sex offenders who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and evaluation to determine whether they meet the criteria for an SVP. 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 criminal behavior." Those offenders who are found to meet the criteria are referred to district attorneys. District attorneys then determine whether to pursue their commitment by the courts to treatment in a state mental hospital as an SVP.

Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, offenders who have not completed their prison sentences continue to be held in prison. However, if an offender's prison sentence has been completed, he or she may be held either in county custody or in a state mental hospital. Offenders designated as SVPs 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.

As noted above, state mental hospitals hold sex offenders who have been committed as SVPs. State mental hospitals also hold some sex offenders who have completed their prison sentences, but are still undergoing SVP evaluations or commitment proceedings. As of June 2006, 456 sex offenders were being held in state hospitals with a commitment by a court as an SVP. In addition, 188 sex offenders were being held in state mental hospitals, and 81 were in county custody pending the completion of commitment proceedings.

PROPOSAL

Increase Penalties for Sex Offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases:

- ***It broadens the definition*** of certain sex offenses. For example, the measure expands the definition of aggravated sexual assault of a child to include offenders who are at least seven years older than the victim, rather than the ten years required under current law.
- ***It provides for longer penalties*** for specified sex offenses. For example, it expands the list of crimes that qualify for life sentences in prison to include assault to commit rape during the commission of a first degree burglary.
- ***It prohibits probation*** in lieu of prison for some sex offenses, including spousal rape and lewd or lascivious acts.
- ***It eliminates early release credits*** for some inmates convicted of certain sex offenses (for example, habitual sex offenders who have multiple convictions for specified felony sex offenses such as rape).
- ***It extends parole*** for specified sex offenders, including habitual sex offenders.

These changes would result in longer prison and parole terms for the affected offenders.

Finally, this measure increases court-imposed fees currently charged to offenders who are required to register as sex offenders.

Require GPS Devices for Registered Sex Offenders. Generally under this measure, individuals who have been convicted of a felony sex offense that requires registration and have been sent to prison would be monitored by GPS devices while on parole and for the remainder of their lives.

The CDCR would be authorized to collect fees from affected sex offenders to cover the costs of GPS monitoring. The amount of fees collected from individual offenders would vary depending on their ability to pay.

For text of Proposition 83 see page 127.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Limit Where Registered Sex Offenders May Live. This measure bars any person required to register as a sex offender from living within 2,000 feet (about two-fifths of a mile) of any school or park. A violation of this provision would be a misdemeanor offense, as well as a parole violation for parolees. The longer current law restriction of one-half mile (2,640 feet) for specified high-risk sex offenders on parole would remain in effect. In addition, the measure authorizes local governments to further expand these residency restrictions.

Change SVP Law. This measure generally makes more sex offenders eligible for an SVP commitment. It does this by (1) reducing from two to one the number of prior victims of sexually violent offenses that qualify 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. The measure also requires that SVPs be committed by the court to a state mental hospital for an undetermined period of time rather than the renewable two-year commitment provided for under existing law. As under current law, once an offender had received a commitment as an SVP, he or she could later be released from a state hospital by the courts if (1) DMH determined the individual should no longer be held or (2) the offender successfully petitioned a court for release.

The measure also changes the standard for release of SVPs from a state mental hospital. For example, current law generally requires DMH to examine the mental condition of a sex offender each year. This measure specifically requires DMH, as part of this annual review, to examine whether a person being held in a state hospital as an SVP still meets the definition of an SVP, whether release is in the best interest of the person, and whether conditions could be imposed at time of release that would adequately protect the community. The impact of these changes on the number of SVPs is unknown.

FISCAL EFFECTS

This measure would have a number of significant fiscal effects on state and local agencies. The major fiscal effects are discussed below.

State Prison Costs. This measure would increase the prison population, resulting in a significant increase in prison operating costs. In particular, increasing sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a larger prison population over time. This would result in costs of unknown magnitude, but likely to be in the tens of millions of dollars annually once fully implemented in less than ten years. It is also possible that this measure could eventually result in significant additional capital outlay costs to accommodate the increase in the inmate population.

The impact on the prison population of requiring sex offenders to wear GPS devices is unclear. On the one hand, GPS monitoring could increase the number of offenders who are identified and returned to prison for violating the conditions of their parole or committing new crimes. On the other hand, GPS monitoring could act as a deterrent for some offenders from committing new violations or crimes, hence reducing the likelihood that they return to prison. Whatever net impact GPS does have on returns to prison will also affect parole, court, and local law enforcement workloads and associated costs.

State Parole and GPS Monitoring Costs. The initiative's provisions requiring specified registered sex offenders to wear GPS devices while on parole and for the remainder of their lives would result in additional costs for GPS equipment, as well as for supervision staff to track offenders in the community. These costs are likely to be 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 whether local governments would bear some of these long-term costs. These costs likely would be partially offset by several million dollars annually in court and parolee fees authorized by the measure, though the exact amount would largely depend on offenders' ability to pay.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

State SVP Program Costs. By making more sex offenders eligible for SVP commitments, this measure would result in increased state costs generally in the following categories:

- ***Referral and Commitment Costs.*** These costs are mainly associated with screening sex offenders referred by CDCR to DMH to determine if they merit a full evaluation, performing such evaluations, and providing expert testimony at court commitment hearings. This measure would increase these state costs probably by the low tens of millions of dollars annually. These costs would begin to occur in the initial year of implementation.
- ***State Hospital Costs.*** State costs to staff, maintain, and operate the mental hospitals could reach $100 million annually within a decade and would continue to grow significantly thereafter. These costs would result from additional SVP commitments to state mental hospitals, as well as holding some sex offenders—who have completed their prison sentences—in state mental hospitals while they are being evaluated to determine whether they should receive an SVP commitment. (Some of the sex offenders undergoing evaluation as SVPs might also be held in county jails.)

  Additional SVP commitments could eventually result in one-time capital outlay costs of up to several hundred million dollars for the construction of additional state hospital beds.

  The additional operational and capital outlay costs would be partly offset in the long term. This is because the longer prison sentences for certain sex crimes required by this measure would delay SVP referrals and commitments to state mental hospitals. These costs would also be partly offset because the change from two-year commitments to commitments for an undetermined period of time is likely to reduce DMH's costs for SVP evaluations and court testimony. However, our analysis indicates that on balance the operating and capital outlay costs to the state are likely to be substantially greater than the savings.

Court and Jail Fiscal Impacts. This measure would also affect state and local costs associated with court and jail operations. For example, the additional SVP commitment petitions resulting from this measure would increase court costs for hearing 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 county jail facilities. The provision making it unlawful for sex offenders to reside within 2,000 feet of a school or park could result in additional court and jail costs to prosecute violations of this provision.

Other provisions of this measure could result in savings for court and jail operations. The measure's provisions providing for the indeterminate commitment of SVPs, instead of the current two-year recommitment process, would reduce county costs for SVP commitment proceedings. Provisions of this measure would increase the length of time that some sex offenders spend in prison or mental hospitals. To the extent that this occurs, these offenders would likely commit fewer crimes in the community, resulting in some court and local criminal justice savings.

Given the potential for the factors identified above to offset each other, the net fiscal impact of this measure on state and local costs for the court and jail operations cannot be determined at this time.

Other Impacts on State and Local Governments. There 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.

For text of Proposition 83 see page 127.

PROP 83 SEX OFFENDERS. SEXUALLY VIOLENT PREDATORS. PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING. INITIATIVE STATUTE. ★ ★ ★

ARGUMENT IN FAVOR OF PROPOSITION 83

Proposition 83—JESSICA'S LAW—will protect our children by keeping child molesters in prison longer; keeping them away from schools and parks; and monitoring their movements after they are released.

A rape or sexual assault occurs *every two minutes.* A child is abused or neglected *every 35 seconds.*

Over 85,000 registered sex offenders live in California. Current law does not provide Law Enforcement with the tools they need to keep track of these dangerous criminals. *Secrecy is the child molester's biggest tool.* How can we protect our children if we don't even know where the sex offenders are?

Proposition 83 is named after Jessica Lunsford, a 9-year-old girl who was kidnapped, assaulted, and buried alive by a convicted sex offender who had failed to report where he lived.

Proposition 83 will:

Electronically monitor, through GPS tracking, dangerous sex offenders for life once they finish their prison terms.

Require dangerous sex offenders to *serve their entire sentence* and not be released early for any reason.

Create PREDATOR FREE ZONES *around schools and parks* to prevent sex offenders from living near where our children learn and play.

Protect children from INTERNET PREDATORS by cracking down on people who use the Internet to sexually victimize children.

Require MANDATORY MINIMUM PRISON SENTENCES for dangerous child molesters and sex criminals.

Allow prosecutors to charge criminals who possess *child pornography with a felony.* (Current law treats child porn like trespassing or driving on a suspended license!)

Crime Victims and Law Enforcement leaders urge you to pass this much needed reform. Jessica's Law is supported by:

• California State Sheriffs Association • California District Attorneys Association • California Organization of Police and Sheriffs • California Police Chiefs Association • Crime Victims United of California • California Women's Leadership Association • California Sexual Assault Investigators Association • Women Prosecutors of California • Mothers Against Predators • Mark Lunsford, father of Jessica Lunsford • Numerous cities, counties, and local sheriffs, police chiefs, and elected officials.

Law enforcement professionals know there is a high risk that a sexual predator will commit additional sex crimes after being released from prison. Prop. 83 keeps these dangerous criminals in prison longer and keeps track of them once they are released.

Proposition *83 means safer schools*, safer parks, and safer neighborhoods.

Proposition *83 means dangerous child molesters will be kept away from our children* and monitored for life.

Proposition *83 means predatory sex criminals will be punished* and serve their full sentence in every case.

Our families deserve the protection of a tough sex offender punishment and control law. The State Legislature has failed to pass Jessica's Law time and time again. WE CANNOT WAIT ANOTHER DAY TO PROTECT OUR KIDS.

Vote YES on Proposition 83—JESSICA'S LAW—to protect our families and make California a safer place for all of us.

For more information, please visit *www.JessicasLaw2006.com.*

GOVERNOR ARNOLD SCHWARZENEGGER
DISTRICT ATTORNEY BONNIE DUMANIS
San Diego County
HARRIET SALARNO, President
Crime Victims United of California

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 83

The argument in favor of Proposition 83 ignores the sad lessons learned by other states. For example, the leading prosecutors' association in Iowa, which once urged the adoption of laws similar to Proposition 83, now argues that those laws be repealed because they have proven to be *ineffective, a drain on crucial law enforcement resources, and far too costly to taxpayers.* California cannot afford to repeat that mistake.

The Proponents claim that the law is directed at "child molesters" and "dangerous sex offenders," but *its most punitive and restrictive measures would apply far more broadly: even to those convicted of misdemeanor, nonviolent offenses.* They would also apply to people who have long led law-abiding lives for years after completing their sentences. More specifically, the Proposition would:

— Prohibit thousands of *misdemeanor offenders* from living near a school or park for the rest of their lives.

— Impose lifetime GPS monitoring on first-time offenders convicted of nonviolent offenses. *For example, a 19-year-old boy could be subjected to lifetime monitoring after a conviction for having sexual contact with his 17-year-old girlfriend.*

— Impose both lifetime residence restrictions and lifetime GPS monitoring on thousands of people who have lived law abiding lives for years or even decades.

These results are simply wrong.

Here's the bottom line. California has laws that protect us from Sexually Violent Predators, and this Initiative could have focused on such dangerous persons. But, it does not! *Don't be fooled.* VOTE NO ON PROPOSITION 83.

CARLEEN R. ARLIDGE, President
California Attorneys for Criminal Justice

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

ARGUMENT AGAINST PROPOSITION 83

Proposition 83 would cost taxpayers an estimated $500 million but would not increase our children's safety. Instead, by diluting law enforcement resources, the initiative would actually reduce most children's security while increasing the danger for those most at risk:

—First, the initiative proposes to "monitor" *every* registered sex offender, on the misguided theory that each is likely to reoffend against "strangers." But law enforcement experience shows that when sex registrants reoffend, their targets are *usually members of their own household. This Proposition would do nothing to safeguard children in their own homes, even though they are most at risk.*

—Second, the Proposition would not focus on the real problem—dangerous sex offenders—but would instead waste limited resources tracking persons who pose no risk. *The new law would create an expensive tracking system for thousands of registrants who were convicted of minor, nonviolent offenses, perhaps years or decades ago.* Law enforcement's resources should be directed toward high risk individuals living in our neighborhoods.

Proposition 83 would have other dangerous, unintended consequences. The Proposition's monitoring provisions would be least effective against those posing the greatest danger. Obviously, dangerous offenders would be the least likely to comply, so the proposed law would push the more serious offenders underground, where they would be *less effectively monitored by police.* In addition, by prohibiting sex offenders from living within 2,000 feet of a park or school, the initiative would force many offenders from urban to rural areas with smaller police forces. *A high concentration of sex offenders in rural neighborhoods will not serve public safety.*

Prosecutors in the State of Iowa know from sad experience that this type of residency restriction does not work. In 2001, Iowa adopted a similar law, but the association of county prosecutors that once advocated for that law now say that it *"does not provide the protection that was originally intended and that the cost of enforcing the requirement and unintended effects on families of offenders warrant replacing the restriction with more effective protective measures."* (February 14, 2006, "Statement on Sex Offender Residency Restrictions in Iowa," Iowa County Attorneys Association.) (To see the full Statement, go to: *www.iowa-icaa.com/index.htm* or *www.cacj.org.*)

A summary of the Iowa prosecutors' findings shows why the Iowa law was a disaster and why Proposition 83 must be rejected:

- Residency restrictions do not reduce sex offenses against children or improve children's safety.
- Residency restrictions will not be effective against 80 to 90% of sex crimes against children, because those crimes are committed by a relative or acquaintance of the child.
- Residency restrictions cause sex registrants to disappear from the registration system, harming the interest of public safety.
- Enforcing the residency restrictions is expensive and ineffective.
- The law also caused unwarranted disruption to the innocent families of ex-offenders.

For all of these reasons, vote "No" on Proposition 83!

CARLEEN R. ARLIDGE, President
California Attorneys for Criminal Justice

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 83

Don't be fooled by the false arguments the group of lawyers against Proposition 83 is making. They represent criminal defense attorneys who make their living defending criminals. Of course they don't want tougher laws!

Let's consider the FACTS:

- EVERY major POLICE, SHERIFF, and DISTRICT ATTORNEY organization in California strongly supports Jessica's Law.
- EVERY major CRIME VICTIM organization in California strongly supports Jessica's Law.
- Thousands of dangerous sexual predators are living in our communities and neighborhoods, and police do not have the tools they need to track them down.
- Jessica's Law will KEEP TRACK OF FELONY SEX OFFENDERS after their release from prison by requiring them to wear a GPS tracking device at all times.
- Jessica's Law will STOP dangerous sex offenders from living near schools and parks where they can stalk and prey on our children.

Your YES vote on Proposition 83—Jessica's Law—will give law enforcement the tools they need to stop sexual predators before they strike again.

The man who confessed to murdering nine-year-old Jessica Lunsford was a convicted sex offender who failed to register with local police. He took Jessica from her bedroom window, assaulted her for three days, and buried her alive only a few doors from her home.

GPS MONITORING COULD HAVE SAVED JESSICA'S LIFE! Tragically, it's too late to save Jessica Lunsford. But it's not too late to prevent countless other children from being attacked and murdered by sexual predators.

Vote YES on 83—Jessica's Law.

MONTY HOLDEN, Executive Director
California Organization of Police and Sheriffs (COPS)

STEVE IPSEN, President
California Deputy District Attorneys Association

SHERIFF GARY PENROD, President
California State Sheriffs Association

include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 83

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as "The Sexual Predator Punishment and Control Act: Jessica's Law."

SEC. 2. FINDINGS AND DECLARATIONS

The People find and declare each of the following:

(a) The State of California currently places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the People in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is an useful tool for monitoring sexual predators and other sex offenders and is a cost effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(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.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b)(1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration in~~ *any* violation of Section *264.1, 288, or* 289, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect

Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. ~~Every~~ *(a) Except as provided in subdivision (b), any* person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 ~~is punishable~~ *shall be punished* by imprisonment in the state prison for two, four, or six years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~10~~ *seven* or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Rape or sexual penetration, in concert, in* violation of Section 264.1.

(3) Sodomy, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(4) Oral copulation, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 288a~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

SEC. 6. Section 288.3 is added to the Penal Code, to read:

288.3. (a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

SEC. 7. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for ~~violation~~ *commission* of the underlying offense, be punished by a fine of ~~two~~ *three* hundred dollars ~~($200)~~ *($300)* upon the first conviction or a fine of ~~three~~ *five* hundred dollars ~~($300)~~ *($500)* upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out* of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections or the Department of the Youth Authority may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (a) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority. All moneys collected by the Department of Corrections or the Department of the Youth Authority under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 8. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a ~~public offense~~ *felony* and shall be punished by imprisonment in the *state prison, or a* county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) ~~If a~~ *Every* person *who commits a violation of subdivision (a), and who* has been previously convicted of a violation of this section, ~~or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she~~ *an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the above-mentioned offenses,* is guilty of a felony and shall be punished by imprisonment *in the state prison* for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 286.*

(5) Oral copulation ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 288a.*

(6) Lewd ~~acts on a child under the age of 14 years~~ *or lascivious act* as defined in *subdivision (a) or (b) of* Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7*, 12022.8,* or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in *subdivision (a) of Section 12022.3, or* Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense~~ *Sexual penetration as* defined in subdivision (a) *or (j)* of Section 289 ~~where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit ~~mayhem, rape, sodomy, or oral copulation~~ *a specified felony*, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 10. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is ~~found guilty~~ *convicted* of violating Section 288 *or 288.5* shall receive a five-year enhancement for a prior conviction of an offense ~~listed~~ *specified* in subdivision (b)~~, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction~~.

(b) Section 261, *262,* 264.1, *269,* 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses ~~set forth~~ *specified* in this subdivision.

(c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

~~(d)~~ A violation of Section 288 *or 288.5* by a person who has been

previously convicted two or more times of an offense ~~listed~~ *specified* in subdivision ~~(c) is punishable as a felony~~ *(b) shall be punished* by imprisonment in the state prison for 15 years to life. ~~However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.~~

SEC. 11. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is ~~found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *convicted of an offense specified in subdivision (e) and* who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions ~~provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.~~

(b) Any person *who is* convicted of an offense specified in subdivision ~~(a)~~ *(e) and* who has served two or more prior prison terms as defined in Section 667.5 for any ~~offense specified in subdivision (a),~~ *of those offenses* shall receive a 10-year enhancement for each of those prior terms ~~provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.~~

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction~~ *an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).* If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be ~~served~~ *imposed* for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *an offense specified in subdivision (e)* if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) *This section shall apply to the following offenses:*

(1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.

(5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.

(8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.

(9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.

(10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837. If the court orders a fine to be imposed pursuant to *this* subdivision ~~(a) or (b)~~, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 12. Section 667.61 of the Penal Code is amended to read:

667.61. (a) ~~A~~ *Any* person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for *25 years to* life ~~and shall not be eligible for release on parole for 25 years~~

~~except as provided in subdivision (j)~~.

(b) Except as provided in subdivision (a), ~~a~~ *any* person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for *15 years to* life ~~and shall not be eligible for release on parole for 15 years except as provided in subdivision (j)~~.

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) ~~A~~ *Lewd or lascivious act, in* violation of subdivision (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(6) ~~Sodomy or oral copulation~~ *Sodomy,* in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~ or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(7) ~~A~~ *Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.*

(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288~~, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066~~.

(9) Continuous sexual abuse of a child, in violation of Section 288.5.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary *of the first degree*, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary~~, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public,~~ in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or *a* firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim ~~by force, violence, or fear~~ in the commission of the present offense in violation of Section 12022.75.

(8) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) ~~which~~ *that* are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b)*, whichever is greater,* rather than being used to impose the punishment authorized under any other *provision of* law, unless another *provision of* law provides for a greater penalty *or the punishment under another provision of law can be imposed in addition to the punishment provided by this section.* However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other *provision of* law.

(g) Notwithstanding *Section 1385 or* any other *provision of* law, the court shall not strike any *allegation, admission, or finding of any* of the circumstances specified in subdivision (d) or (e) *for any person who is subject to punishment under this section.*

~~(g) The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section ~~for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c)~~.

(i) For ~~the~~ *any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

(j) The penalties provided in this section ~~to~~ *shall* apply~~,~~ *only if* the existence of any ~~fact required under~~ *circumstance specified in* subdivision (d) or (e) ~~shall be~~ *is* alleged in the accusatory pleading *pursuant to this section,* and *is* either admitted by the defendant in open court or found to be true by the trier of fact.

~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 13. Section 667.71 of the Penal Code amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses ~~listed~~ *specified* in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender ~~is punishable~~ *shall be punished* by imprisonment in the state prison for 25 years to life. ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25~~

~~years in the state prison.~~

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) ~~A~~ *Lewd or lascivious act, in* violation of subdivision (a) or (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) *or (j)* of Section 289.

(6) ~~A~~ *Continuous sexual abuse of a child, in* violation of Section 288.5.

(7) ~~A~~ *Sodomy, in* violation of subdivision (c) *or (d)* of Section 286 ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(8) ~~A violation of subdivision (d) of Section 286.~~

~~(9) A~~ *Oral copulation, in* violation of subdivision (c) or (d) of Section 288a ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

~~(10) A~~ *(9) Kidnapping, in* violation of subdivision (b) of Section 207.

~~(11) A~~ *(10) Kidnapping, in* violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

~~(12)~~ *(11)* Kidnapping, in violation of *subdivision (b) of* Section 209 with the intent to commit ~~rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289~~ *a specified sexual offense.*

~~(13) A~~ *(12) Aggravated sexual assault of a child, in* violation of Section 269.

~~(14)~~ *(13)* An offense committed in another jurisdiction that ~~has~~ *includes* all *of* the elements of an offense specified in ~~paragraphs (1) to (13), inclusive, of~~ this subdivision.

(d) *Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.*

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the ~~information~~ *accusatory pleading*, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury~~ *trier of fact.*

SEC. 14. Section 1203.06 of the Penal Code is amended to read:

1203.06. ~~Notwithstanding Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, *nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for,* any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207, *209, or 209.5.*

(D) ~~Kidnapping in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(E) Burglary of the first degree, as defined in Section 460.

(F) ~~Except as provided in Section 1203.065, rape~~ *Rape,* in violation of ~~paragraph (2) of subdivision (a) of~~ Section 261*, 262, or 264.1.*

(G) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) Carjacking, in violation of Section 215.

(J) ~~Any person convicted of aggravated~~ *Aggravated* mayhem, in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(M) A felony violation of Section 136.1 or 137.

(N) Sodomy, in violation of Section 286.

(O) Oral copulation, in violation of Section 288a.

(P) Sexual penetration, in violation of Section 289 or 264.1.

(Q) Aggravated sexual assault of a child, in violation of Section 269.

(2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of~~ paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b)(l) The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury~~ *trier of fact.*

(2) ~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3)~~ As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, ~~or~~ to intentionally strike or hit a human being with it*, or to use it in any manner that qualifies under Section 12022.5.*

~~(4)~~ *(3)* As used in subdivision (a), "armed with a firearm" means to knowingly carry *or have available for use* a firearm as a means of offense or defense.

SEC. 15. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other *provision of* law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) *or (6)* of subdivision (a) of Section 261, Section 264.1, 266h, 266i, ~~or~~ 266j, *or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a,* subdivision (a) of Section 289, ~~of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,~~ or ~~of violating~~ subdivision (c) of Section 311.4.

(b)*(1)* Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of~~ *violating* paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, *subdivision (g) of Section 289,* or Section 220 for assault with intent to commit ~~any of the following: rape, sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289~~ *a specified sexual offense.*

(2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 16. Section 1203.075 of the Penal Code is amended to read:

1203.075. ~~Notwithstanding the provisions of Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who~~, with the intent to inflict the injury,~~ personally inflicts great bodily injury*, as defined in Section 12022.7,* on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207*, 209, or 209.5.*

(4) ~~Kidnapping, in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of ~~paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of~~ Section *261,* 262*, or 264.1.*

(7) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) ~~A~~ *Sexual penetration, in* violation of ~~subdivision (a) of~~ Section 289 *or 264.1.*

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, in violation of Section 215.

(13) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(14) Aggravated sexual assault of a child, in violation of Section 269.

(b)~~(1)~~ The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury~~ *trier of fact.*

~~(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.~~

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. (a)(l) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) ~~Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is~~ *The parole period of any person found to be* a sexually violent predator shall ~~not toll, discharge, or otherwise affect that person's~~ *be tolled until that person is found to no longer be a sexually violent predator, at which time the* period of parole*, or any remaining portion thereof, shall begin to run.*

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be ~~five~~ *10* years. ~~Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.~~

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~ and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, ~~in no case, except~~ *the period of parole is subject to the following:*

(A) Except as provided in Section 3064, *in no case* may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial ~~parole, and, except~~ *parole*.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 18. Section 3000.07 is added to the Penal Code, to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any

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or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 19. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement ~~or since extension of parole~~, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) *Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.*

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

~~(d)~~ *(e)* The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 20. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(l) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a

felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g)~~(1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.~~

Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

~~(h)~~ Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

~~(i)~~ *(h)* The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

~~(j)~~ *(i)* An inmate may be paroled to another state pursuant to any other law.

~~(k)~~ *(j)*(1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 21. Section 3003.5 of the Penal Code is amended to read:

3003.5. *(a)* Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 22. Section 3004 of the Penal Code is amended to read:

3004. *(a)* Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 23. Section 12022.75 of the Penal Code is amended to read:

12022.75. ~~Any~~ *(a) Except as provided in subdivision (b), any* person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b)(1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

SEC. 24. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against ~~two~~ *one* 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 criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an

offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently 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 criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, ~~or~~ fear of immediate and unlawful bodily injury on the victim or another person, *or threatening to retaliate in the future against the victim or any other person,* and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as ~~provided~~ *defined* in subdivision (a): a felony violation of ~~paragraph (2) of subdivision (a) of~~ Section 261, ~~paragraph (1) of subdivision (a) of Section~~ 262, ~~Section~~ 264.1, *269, 286,* ~~subdivision (a) or (b) of Section~~ 288, *288a, 288.5,* or ~~subdivision (a) of Section~~ 289 of the Penal Code, or ~~sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code~~ *any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.*

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, ~~no more than one~~ *a* prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following ~~applies~~ *apply*:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). ~~Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.~~

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 25. Section 6600.1 of the Welfare and Institutions Code is amended to read:

6600.1. ~~(a)~~ If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 ~~and the offending act or acts involved substantial sexual conduct~~, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

~~(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.~~

SEC. 26. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a)(l) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and

shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall ~~not~~ toll~~, discharge, or otherwise affect~~ the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(*l*) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 27. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for ~~two years~~ *an indeterminate term* to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health~~, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment~~. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 28. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The ~~two-year~~ *indeterminate* term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. ~~The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.~~

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to ~~extended~~ *all* commitment proceedings.

SEC. 29. Section 6605 of the Welfare and Institutions Code is amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person.* The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) ~~The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.~~ *If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.*

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for ~~a~~ *an indeterminate* period ~~of two years~~ from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he

or she shall be unconditionally released and unconditionally discharged.

SEC. 30. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent~~ *or an* unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 31. Intent Clause

It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

SEC. 32. Severability Clause

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 33. Amendment Clause

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

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PROPOSITION 84

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Division 43 is added to the Public Resources Code, to read:

DIVISION 43. THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

CHAPTER 1. GENERAL PROVISIONS

75001. This Division shall be known and may be cited as the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

75002. The people of California find and declare that protecting the state's drinking water and water resources is vital to the public health, the state's economy, and the environment.

75002.5. The people of California further find and declare that the state's waters are vulnerable to contamination by dangerous bacteria, polluted runoff, toxic chemicals, damage from catastrophic floods and the demands of a growing population. Therefore, actions must be taken to ensure safe drinking water and a reliable supply of water for farms, cities and businesses, as well as to protect California's rivers, lakes, streams, beaches, bays and coastal waters, for this and future generations.

75003. The people of California further find and declare that it is

AB-231 The Sexual Predator Punishment and Control Act: Jessica's Law. (2005-2006)

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE— 2005–2006 REGULAR SESSION

ASSEMBLY BILL NO. 231

Introduced by Assembly Member Sharon Runner, ***La Suer***

(Principal Coauthor(s): Assembly Member Garcia, Shirley Horton, Houston, Tran)

February 07, 2005

~~An act to repeal Section 704.090 of the Code of Civil Procedure, and to amend Section 2932 of, and to add Section 5005.1 to, the Penal Code, relating to the Department of Corrections.~~ *An act to amend Sections 209, 220, 269, 290.3, 311.11, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 1170.125, 1203.06, 1203.065, 1203.075, 3000, 3001, 3003, 3003.5, 3004, and 12022.75 of, and to add Sections 288.3 and 3000.07 to, the Penal Code, and to amend Sections 6600, 6600.1, 6601, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to sex offenders.*

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Sharon Runner. ~~Department of Corrections.~~ *The Sexual Predator Punishment and Control Act: Jessica's Law.*

Under existing law, the punishment for kidnapping with the intent to commit any of several specified sexual acts is imprisonment in the state prison for life with the possibility of parole.

This bill, to be known as the Sexual Predator Punishment and Control Act: Jessica's Law, would add rape committed in concert and committing lewd and lascivious acts to the above specified sexual acts.

Under existing law, the punishment for assault with intent to commit any of several specified sexual acts is imprisonment in the state prison for 2, 4, or 6 years.

This bill would provide that the punishment for assaulting another person with the intent to commit any of several specified sexual acts while in the commission of a first degree burglary is imprisonment in the state prison for life with the possibility of parole.

Under existing law, a person who commits any of several sexual acts upon a child who is under 14 years of age and 10 or more years younger that the person, is guilty of aggravated sexual assault of a child.

This bill would change the age elements of the crime to 14 years of age and 7 or more years younger than the perpetrator, and would expand the types of sex offenses to which it would apply. The bill would require the court to impose a consecutive sentence for each offense that results in a conviction under this provision.

This bill would create a new felony offense for persons who contact or communicate with a minor, as defined, or who attempt to contact or communicate with a minor, or a person they know or reasonably should know is a minor, with the intent to commit any of several specified sex offenses.

Under existing law, the court is required to impose a fine of $200 for the first conviction of a person who is convicted of a sex offense for which registration as a sex offender is required, and $300 for a subsequent conviction.

This bill would increase those fines to $300 and $500, respectively, and would allocate $100 from each fine to the Department of Corrections and Rehabilitation to defray the costs of global positioning systems used to monitor sex offender parolees.

Under existing law, it is a misdemeanor for a person to knowingly possess or control any matter or representation of information, data, or image, as specified, the production of which involves the use of a person under 18 years of age engaging in or simulating sexual conduct. If a person has previously been convicted of that crime, or other crimes related to child pornography, the punishment is imprisonment in the state prison for 2, 4, or 6 years.

This bill would increase the penalty for the first offense of that crime to a misdemeanor or felony. The bill would expand the types of crimes that would trigger punishment for a subsequent offense.

Existing law, which requires amendments to its provisions to be approved by 2/3 of the membership of both houses of the Legislature, defines "violent felony" for purposes of various provisions of the Penal Code.

This bill would include in that definition various sex offenses committed against a child who is under 14 years of age and more than 10 years younger than the perpetrator, or committed in concert.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex offense is 10 years. The enhanced term does not apply if that person has not been in custody for, or committed a felony during, at least 10 years between the instant and prior offense. Existing law requires the person to receive credits for time served or work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provision apply, delete the 10-year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

Under existing law, persons who are convicted of committing certain sex offense who have previously been convicted of other sex offenses, including habitual sexual offenders, as defined, or who are convicted of certain sex offenses during the commission of another offense, are eligible for credit to reduce the minimum term imposed.

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of these sex crimes.

This bill would add continuous sexual abuse of a child to those sex offenses.

Under existing law, the court has the authority to order an action dismissed or to strike a prior conviction, for purposes of sentencing a defendant.

This bill would prohibit a court from striking an allegation, admission, or finding of a prior conviction for, and would prohibit granting probation to, or suspending the execution or imposition of sentence for, defendants who are convicted of certain sex offenses.

Under existing law, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for any person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

Under existing law, any finding made that a person is a sexually violent predator, as specified, shall not toll, discharge, or otherwise affect that person's period of parole.

This bill would instead provide that the parole period of a person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole shall begin to run.

Under existing law, the period of parole for a person convicted of certain sex offenses is 5 years, which period may be extended for an additional 5 years after a hearing by the Board of Parole Hearings.

This bill would increase that period of parole to 10 years, would eliminate the possibility of extension of parole, and would authorize that person to be discharged from parole after 6 years, as specified.

Existing law requires all persons convicted of specified sex offense to register as a sex offender, as specified.

This bill would require every person who has been convicted of a felony that triggers the registration requirement, or an attempt to commit such a felony, who is released on parole, to be monitored by a global positioning system for the term of his or her parole. The bill would require the parolee to pay the cost of the monitoring, except upon a finding of the inability to pay. The bill would further require all of those persons to continue being monitored by a global positioning system, once discharged from parole, for the rest of their lives.

Existing law prohibits a person who was convicted of certain sex offenses with children from being placed or residing within 1/4 mile of any public or private school during the period of parole.

This bill would eliminate that prohibition and instead provide that it is unlawful for any person who is required to register as a sex offender to reside within 2000 feet or any public or private school, or any park where children regularly gather.

Existing law provides for an enhanced penalty of 3 years for any person who administers a controlled substance to another person against his or her will, for the purpose of committing a felony.

This bill would create an additional enhancement of 5 years if that felony is any of several specified sex offenses.

Existing law defines "conviction for a sexually violent offense" for purposes of laws pertaining to sexually violent predators.

This bill would expand that definition to include certain prior convictions, and would expand the definition of "sexually violent offense" for those purposes.

Under existing law, if the victim of certain specified sex offenses is a child under 14 years of age and the offending act involved substantial sexual conduct, the offense is considered a "sexually violent offense" for purposes of enhanced punishment.

This bill would eliminate the element of substantial sexual conduct from that definition.

Under existing law, if a person is determined to be a sexually violent predator, he or she is committed to the State Department of Mental Health for 2 years for appropriate treatment and confinement. Confinement may not be extended except by court order.

This bill would change that commitment to an indeterminate term, and would require an annual report to be made about the appropriateness of conditionally releasing the person to a less restrictive environment.

Because this bill would expand the scope of certain crimes, increase the penalties for certain crime, and create a new crime, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law sets the maximum value of an inmate's trust account which may be exempt from the enforcement of a money judgment, as specified.~~

~~This bill would eliminate that exemption.~~

~~Existing law establishes the Department of Corrections, which is comprised of the Director of Corrections and the Prison Industry Authority.~~

~~Existing law provides that the department may deny time credits and privileges for inmate misconduct, based upon the severity of the offense, and existing law further provides procedures for investigating and determining appropriate sanctions, as specified.~~

~~This bill would provide that a department hearing officer may suspend an inmate's privileges for up to 360 days for the commission of certain serious offenses such as murder and serious assault, as specified.~~

~~Existing law provides that the department may maintain a canteen for the purpose of selling various items to those persons confined in the state's prisons.~~

~~This bill would provide for the restriction or suspension of an inmate's canteen privileges if he or she is found to have committed any felony involving violence or injury to a nonprisoner, as specified.~~

Vote: ~~majority~~*2/3* Appropriation: no Fiscal Committee: yes Local Program: ~~no~~*yes*

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.SECTION 1.This act shall be known, and may be cited as, the Sexual Predator Punishment and Control Act: Jessica's Law.SECTION 1.
SEC. 2. *The Legislature finds and declares the following:*

(a) The State of California currently places a high priority on maintaining public safety through highly skilled and trained law enforcement personnel as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under 18 years of age. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90 percent of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the people in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the people to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is a useful tool for monitoring sexual predators and other sex offenders, and is a cost-effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(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, that does not provide for indeterminate commitments for those persons. 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 protecting 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.

SEC. 3. *Section 209 of the Penal Code is amended to read:*

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any ~~such act~~ *of those acts*, is guilty of a felony~~, and upon~~. *Upon* conviction thereof, *a person* shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any ~~such act~~ *of those acts* suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole ~~in cases where no such person suffers~~ *if the victim does not suffer* death or bodily harm.

(b) (1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration in~~ *any* violation of Section *264.1, 288, or* 289, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. *Section 220 of the Penal Code is amended to read:*

220. ~~Every~~ *(a) Except as provided in subdivision (b), any* person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288 or 289 ~~is punishable~~ *shall be punished* by imprisonment in the state prison for two, four, or six years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 5. *Section 269 of the Penal Code is amended to read:*

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~10~~ *seven* or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Rape or sexual penetration, in concert, in* violation of Section 264.1.

(3) Sodomy, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(4) Oral copulation, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d) of* Section 288a~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions, as defined in subdivision (d) of Section 667.6.

SEC. 6. *Section 288.3 is added to the Penal Code, to read:*

288.3. *(a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.*

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that is achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who previously has been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

SEC. 7. *Section 290.3 of the Penal Code is amended to read:*

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of ~~two~~ *three* hundred dollars ~~($200)~~ *($300)* upon the first conviction or a fine of ~~three~~ *five* hundred dollars ~~($300)~~ *($500)* upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out* of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections ~~or the Department of the Youth Authority~~ *and Rehabilitation* may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (a) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections ~~or the Department of the Youth Authority~~ *and Rehabilitation*. All moneys collected by the Department of Corrections ~~or the Department of the Youth Authority~~ *and Rehabilitation* under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars ($100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars ($100) shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees, pursuant to Section 3000.07.

SEC. 8. *Section 311.11 of the Penal Code is amended to read:*

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year *or in the state prison*, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) ~~If a person~~ *Every person who commits a violation of subdivision (a) and who* has been previously convicted of a violation of this section, ~~or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she~~ *an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the offenses listed in this subdivision,* is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. *Section 667.1 of the Penal Code is amended to read:*

667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by ~~this act~~ *the act enacted during the 2005-06 Regular Session that amended this section*.

SEC. 10. *Section 667.5 of the Penal Code is amended to read:*

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served

prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~*, as defined in subdivision (c) or (d) of Section 286*.

(5) Oral copulation ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~*, as defined in subdivision (c) or (d) of section 288a*.

(6) Lewd ~~acts on a child under the age of 14 years~~ *or lascivious acts,* as defined in *subdivision (a) or (b) of* Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense~~ *Sexual penetration, as* defined in subdivision (a) *or (j)* of Section 289 ~~where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit ~~mayhem, rape, sodomy, or oral copulation~~ *a specified felony*, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections *and Rehabilitation* is incarcerated at a facility operated by the ~~Department of the Youth Authority~~ *Division of Juvenile Facilities*, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 11. *Section 667.51 of the Penal Code is amended to read:*

667.51. (a) Any person who is ~~found guilty~~ *convicted* of violating Section 288 *or 288.5* shall receive a five-year enhancement for a prior conviction of an offense ~~listed~~ *specified* in subdivision (b)~~, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction~~.

(b) Section 261, *262,* 264.1, *269,* 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses ~~set forth~~ *specified* in this subdivision.

(c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

~~(d)~~ A violation of Section 288 *or 288.5* by a person who has been previously convicted two or more times of an offense ~~listed~~ *specified* in subdivision ~~(c) is punishable as a felony~~ *(b) shall be punished* by imprisonment in the state prison for 15 years to life. ~~However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.~~

SEC. 12. *Section 667.6 of the Penal Code is amended to read:*

667.6. (a) Any person who is ~~found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *convicted of an offense specified in subdivision (e) and* who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions ~~provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837~~.

(b) Any person *who is* convicted of an offense specified in subdivision ~~(a)~~ *(e) and* who has served two or more prior prison terms as defined in Section 667.5 for any ~~offense specified in subdivision (a),~~ *of those offenses* shall receive a 10-year enhancement for each of those prior terms ~~provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837~~.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction~~ *an offense specified in subdivision (e) if the crimes involved the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e)*. If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be ~~served~~ *imposed* for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision~~

~~(k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *an offense specified in subdivision (e)* if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) *This section shall apply to the following offenses:*

(1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.

(5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.

(8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.

(9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.

(10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(g) If the court orders a fine to be imposed pursuant to ~~subdivision (a) or (b)~~ *this section*, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 13. *Section 667.61 of the Penal Code is amended to read:*

667.61. (a) ~~A~~ *Any* person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for ~~life and shall not be eligible for release on parole for 25 years except as provided in subdivision (j)~~ *25 years to life*.

(b) Except as provided in subdivision (a), ~~a~~ *any* person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for ~~life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j)~~ *15 years to life*.

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal ra*pe, in violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) A *lewd or lascivious act, in* violation of subdivision (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(6) Sodomy ~~or oral copulation~~, in violation of Section 286 ~~or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(7) *Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) of Section 288a.*

(8) A *lewd or lascivious act, in* violation of subdivision (a) of Section 288 ~~, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066~~.

(9) Continuous sexual abuse of a child, in violation of Section 288.5.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary *of the first degree*, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, ~~as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public,~~ in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim ~~by force, violence, or fear~~ in the commission of the present offense in violation of Section 12022.75.

(8) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) ~~which~~ *that* are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b)*, whichever is greater,* rather than being used to impose the punishment authorized under any other *provision of* law, unless another *provision of* law provides for a greater penalty*, or the punishment under another provision of law may be imposed in addition to the punishment provided by this section*. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other *provision of* law. ~~Notwithstanding~~

(g) Notwithstanding Section 1385 or any other *provision of* law, the court shall not strike any *allegation, admission, or finding of any* of the circumstances specified in subdivision (d) or (e) *for any person who is subject to punishment under this section*.

~~(g)The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section ~~for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c)~~.

(i) For ~~the penalties~~ *any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

(j) The penalties provided in this section ~~to~~ *shall* apply ~~,~~ *only if* the existence of any ~~fact required under~~ *circumstance specified in* subdivision (d) or (e) ~~shall be~~ *is* alleged in the accusatory pleading *pursuant to this section* and either admitted by the defendant in open court or found to be true by the trier of fact.

~~(j)Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 14. *Section 667.71 of the Penal Code is amended to read:*

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses ~~listed~~ *specified* in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender ~~is punishable~~ *shall be punished* by imprisonment in the state prison for 25 years to life. ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 years in the state prison.~~

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) A *lewd or lascivious act, in* violation of subdivision (a) or (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) *or (j)* of Section 289.

(6) ~~A~~ *Continuous sexual abuse of a child, in* violation of Section 288.5.

(7) ~~A~~ *Sodomy, in* violation of subdivision (c) *or (d)* of Section 286~~ by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

~~(8)A violation of subdivision (d) of Section 286.~~

~~(9)A~~

(8) Oral copulation, in violation of subdivision (c) or (d) of Section 288a ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

~~(10)A~~

(9) Kidnapping, in violation of subdivision (b) of Section 207.

~~(11)A~~

(10) Kidnapping, in violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

~~(12)~~

(11) Kidnapping in violation of *subdivision (b) of* Section 209 with the intent to commit~~ rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289~~ *a specified sexual offense*.

~~(13)A~~

(12) Aggravated sexual assault of a child, in violation of Section 269.

~~(14)~~

(13) An offense committed in another jurisdiction that~~ has~~ *includes* all *of* the elements of an offense specified in ~~paragraphs (1) to (13), inclusive, of~~ this subdivision.

(d) *Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.*

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the ~~information~~ *accusatory pleading*, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury~~ *trier of fact*.

SEC. 15. *Section 1170.125 of the Penal Code is amended to read:*

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by~~ this act~~ *the act enacted during the 2005-06 Regular Session that amended this section*.

SEC. 16. *Section 1203.06 of the Penal Code is amended to read:*

~~Notwithstanding Section 1203:~~

1203.06. (a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, *nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for,* any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207*, 209, or 209.5*.

(D) ~~Kidnapping in violation of Section 209~~ *A lewd or lascivious act, in violation of Section 288*.

(E) Burglary of the first degree, as defined in Section 460.

(F) ~~Except as provided in Section 1203.065, rape~~ *Rape,* in violation of ~~paragraph (2) of subdivision (a) of~~ Section 261*, 262, or 264.1*.

(G) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) Carjacking, in violation of Section 215.

(J) ~~Any person convicted of aggravated~~ *Aggravated* mayhem in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5*.

(M) A felony violation of Section 136.1 or 137.
(N) Sodomy, in violation of Section 286.

(O) Oral Copulation, in violation of Section 288a.

(P) Sexual penetration, in violation of Section 289 or 264.1.

(Q) Aggravated sexual assault of a child, in violation of Section 269.

(2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of~~ paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b) (1) The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury~~ *trier of fact*.

(2)~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3)~~ As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, ~~or~~ to intentionally strike or hit a human being with it*, or to use it in any manner that qualifies under Section 12022.5*.

~~(4)~~

(3) As used in subdivision (a), "armed with a firearm" means to knowingly carry *or have available for use* a firearm as a means of offense or defense.

SEC. 17. *Section 1203.065 of the Penal Code is amended to read:*

1203.065. (a) Notwithstanding any other *provision of* law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) *or (6)* of subdivision (a) of Section 261, Section 264.1, 266h, 266i, ~~or~~ 266j, *or 269, or paragraph (2) or (3) of subdivision (c) or subdivision (d) of Section 286 or 288a, or* subdivision (a) of Section 289, ~~of committing~~

~~sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,~~ or ~~of violating~~ subdivision (c) of Section 311.4.

(b) *(1)* Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of~~ *violating* paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, or Section 220 for assault with intent to commit ~~any of the following: rape, sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289~~ *a specified sexual offense*.

(2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 18. *Section 1203.075 of the Penal Code is amended to read:*

~~Notwithstanding the provisions of Section 1203:~~

1203.075. (a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who~~, with the intent to inflict the injury,~~ personally inflicts great bodily injury*, as defined in Section 12022.7,* on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207*, 209, or 209.5*.

(4) ~~Kidnapping, in violation of Section 209~~*A lewd or lascivious act, in violation of Section 288*.

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of ~~paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262~~ *Section 261, 262, or 264.1*.

(7) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section *264.1 or* 289.

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, in violation of Section 215.

(13) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5*.

(14) Aggravated sexual assault of a child, in violation of Section 269.

(b) ~~(1)~~ The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by ~~the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury~~ *trier of fact*.

~~(2)This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3)As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.~~

SEC. 19. *Section 3000 of the Penal Code is amended to read:*

3000. (a) (1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections *and Rehabilitation* for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of ~~Prison Terms~~ *Parole Hearings* to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) ~~Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is~~ *The parole period of any person found to be* a sexually violent predator shall ~~not toll, discharge, or otherwise affect that person's period of parole~~ *be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run*.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be ~~five~~ *10* years. ~~Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five year period of parole.~~

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~ and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, ~~in no case, except~~ *the period of parole is subject to the following:*

(A) Except as provided in Section 3064, ~~maya prisoner~~ *an inmate* subject to three years on parole *may not* be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole ~~, and, except as~~ .

(B) Except as provided in Section 3064, ~~in no case may a prisoner~~ *an inmate* subject to five years on parole *may not* be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~.

(C) Except as provided in Section 3064, an inmate subject to 10 years on parole may not be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections *and Rehabilitation* shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections *and Rehabilitation* or the Board of ~~Prison Terms~~ *Parole Hearings* may impose as a condition of parole that ~~a prisoner~~ *an inmate* make payments on ~~the prisoner's~~ *his or her* outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of ~~Prison Terms~~ *Parole Hearings* shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state ~~prisoner~~ *inmate* released on parole rests with the Board of ~~Prison Terms~~ *Parole Hearings*, except for any escaped state ~~prisoner~~ *inmate* or any state ~~prisoner~~ *inmate* released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 20. *Section 3000.07 is added to the Penal Code, to read:*

3000.07. *(a) Every person who has been convicted for any felony violation of a registerable sex offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or any attempt to commit any of those offenses, who is released on parole pursuant to Section 3000 or 3000.1, shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.*

(b) A parolee shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the parolee has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the parolee pay for the global positioning system monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 21. *Section 3001 of the Penal Code is amended to read:*

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections *and Rehabilitation* recommends to the Board of ~~Prison Terms~~ *Parole Hearings* that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement ~~or since extension of parole~~, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) *Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.*

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

~~(d)~~

(e) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 22. *Section 3003 of the Penal Code is amended to read:*

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of ~~Prison Terms~~ *Parole Hearings* setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections *and Rehabilitation* setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections *and Rehabilitation*, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the ~~paroling~~ *parole* authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections *and Rehabilitation* to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of ~~Prison Terms~~ *Parole Hearings* or the Department of Corrections *and Rehabilitation* finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g)~~Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one quarter mile of any public or private school including any or all of kindergarten and grades 1 to 8, inclusive.~~

~~(h)~~ Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of ~~Prison Terms~~ *Parole Hearings* or the Department of Corrections *and Rehabilitation* finds that there is a need to protect the life, safety, or well-being of the victim.

~~(i)~~

(h) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

~~(j)~~

(i) An inmate may be paroled to another state pursuant to any other law.

~~(k)~~

(j) (1) Except as provided in paragraph (2), the Department of Corrections *and Rehabilitation* shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 23. *Section 3003.5 of the Penal Code is amended to read:*

3003.5. *(a)* Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 24. *Section 3004 of the Penal Code is amended to read:*

3004. *(a)* Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every person who has been convicted for any felony violation of a registerable sex offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or any attempt to commit any of those offenses, who is discharged from parole shall be monitored by a global positioning system for life.

(c) A person subject to subdivision (b) shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the global positioning monitoring.

SEC. 25. *Section 12022.75 of the Penal Code is amended to read:*

12022.75. ~~Any~~ *(a) Except as provided in subdivision (b), any* person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b) (1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and

Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

***SEC. 26.** Section 6600 of the Welfare and Institutions Code is amended to read:*

6600. As used in this article, the following terms have the following meanings:

(a) (1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against ~~two~~ *one* 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 criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently 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 criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, ~~or~~ fear of immediate and unlawful bodily injury on the victim or another person, *or threatening to retaliate in the future against the victim or any other person,* and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as ~~provided~~ *defined* in subdivision (a): a felony violation of ~~paragraph (2) of subdivision (a) of~~ Section 261, ~~paragraph (1) of subdivision (a) of Section~~ 262, ~~Section~~ 264.1, ~~subdivision (a) or (b) of Section~~ *269, 286,* 288, *288a, 288.5* or ~~subdivision (a) of Section~~ 289 of the Penal Code, or ~~sodomy or oral copulation in violation of Section 286 or 288a~~ *any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 269, 288, 288a, or 289* of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, ~~no more than one~~ *a* prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following ~~applies~~ *apply*:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). ~~Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.~~

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of ~~the Youth Authority~~ *Corrections and Rehabilitation, Division of Juvenile Facilities* for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 27. *Section 6600.1 of the Welfare and Institutions Code is amended to read:*

6600.1. ~~(a)~~ If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 ~~and the offending act or acts involved substantial sexual conduct~~, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

~~(b)"Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.~~

SEC. 28. *Section 6601 of the Welfare and Institutions Code is amended to read:*

6601. (a) (1) Whenever the ~~Director~~ *Secretary of the Department* of Corrections *and Rehabilitation* determines that an individual who is in custody under the jurisdiction of the ~~Department of Corrections~~ *department*, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the ~~director~~ *secretary* shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is

modified by judicial or administrative action, the ~~director~~ *secretary* may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections *and Rehabilitation* and the Board of ~~Prison Terms~~ *Parole Hearings* based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections *and Rehabilitation*. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections *and Rehabilitation* shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation* or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections *and Rehabilitation*. The petition shall be filed, and

the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall ~~not~~ toll~~, discharge, or otherwise affect~~ the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 29. *Section 6604 of the Welfare and Institutions Code is amended to read:*

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for ~~two years~~ *an indeterminate term* to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health~~, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment~~. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections *and Rehabilitation*.

SEC. 30. *Section 6604.1 of the Welfare and Institutions Code is amended to read:*

6604.1. (a) The ~~two-year~~ *indeterminate* term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. ~~The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.~~

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to ~~extended~~ *all* commitment proceedings.

SEC. 31. *Section 6605 of the Welfare and Institutions Code is amended to read:*

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person, and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this section. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person*. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) ~~The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director~~

~~shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.~~ *If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person*.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for ~~a period of two years~~ *an indeterminate period* from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

SEC. 32. *Section 6608 of the Welfare and Institutions Code is amended to read:*

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent~~ *or an* unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 33. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

Campaign Finance:

CAMPAIGN FOR CHILD SAFETY 2006 - JESSICA'S LAW, YES ON 83

Election Cycle:

- ○ 2019 through 2020
- ◉ Historical
  - ○ 2017 through 2018
  - ○ 2015 through 2016
  - ○ 2013 through 2014
  - ○ 2011 through 2012
  - ○ 2009 through 2010
  - ○ 2007 through 2008
  - ◉ 2005 through 2006
  - ○ 2003 through 2004
  - ○ 2001 through 2002
  - ○ 1999 through 2000

View Information:

(Due to the amount of data, these pages may take some time to load.)

- ○ General Information
- ○ Contributions Received
- ○ Contributions Made
- ◉ Expenditures Made
- ○ Late and $5000+ Contributions Received
- ○ Late Contributions Made
- ○ Late Independent Expenditures
- ○ Electronic Filings

All of the committee's expenditures are listed here, including independent expenditures made to support or oppose candidates or ballot propositions.

DOWNLOAD THESE RESULTS: MICROSOFT EXCEL

DATE	PAYEE	EXPENDITURE CODE	DESCRIPTION	AMOUNT
01/16/2006	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$400,000.00
01/31/2006	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$300,000.00
11/08/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$131,000.00
01/27/2006	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$100,000.00

11/02/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$100,000.00
11/04/2006	ISLAND ODYSSEY	CAMPAIGN WORKERS SALARIES		$62,500.00
08/25/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$50,690.20
11/22/2005	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$50,000.00
12/21/2005	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$50,000.00
10/23/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$49,431.85
10/31/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$49,114.57
10/26/2006	VOTERS FOR RESPONSIBLE GOVERNMENT	CAMPAIGN LITERATURE AND MAILINGS		$47,500.00
11/15/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$40,000.00
01/10/2006	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$35,000.00
12/08/2005	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$25,000.00
01/13/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$25,000.00
01/26/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$25,000.00
11/06/2006	VOTERS FOR RESPONSIBLE GOVERNMENT	CAMPAIGN LITERATURE AND MAILINGS		$21,000.00
11/30/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$20,000.00
11/04/2006	ISLAND ODYSSEY	CAMPAIGN WORKERS SALARIES		$20,000.00
12/02/2005	BADER & ASSOCIATES, INC.	PETITION CIRCULATING		$20,000.00
10/27/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$18,237.00
06/20/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN LITERATURE AND MAILINGS		$17,379.00

10/21/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$15,000.00
09/09/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN CONSULTANTS		$15,000.00
08/24/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN CONSULTANTS		$15,000.00
10/31/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN CONSULTANTS		$15,000.00
10/31/2006	OCCIDENTAL COMMUNICATIONS GROUP	CAMPAIGN CONSULTANTS		$15,000.00
10/10/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN CONSULTANTS		$15,000.00
10/10/2005	OCCIDENTAL COMMUNICATIONS GROUP	CAMPAIGN CONSULTANTS		$10,000.00
08/24/2005	OCCIDENTAL COMMUNICATIONS GROUP	CAMPAIGN CONSULTANTS		$10,000.00
09/09/2005	OCCIDENTAL COMMUNICATIONS GROUP	CAMPAIGN CONSULTANTS		$10,000.00
11/02/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$9,922.50
08/08/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$8,240.58
01/19/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$7,608.34
05/31/2006	WARREN, BECKY	CAMPAIGN CONSULTANTS		$6,000.00
10/17/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$5,000.00
10/02/2006	WARREN, BECKY	CAMPAIGN CONSULTANTS		$4,500.00
12/20/2005	PAYCHEX		SEE SCHEDULE G	$3,825.62
09/27/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$3,596.57
12/21/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$3,546.02
10/31/2006	BELL,	PROFESSIONAL SERVICES		$3,515.91

	MCANDREWS & HILTACHK LLP	(LEGAL, ACCOUNTING)		
02/15/2006	PAYCHEX		SEE SCHEDULE G	$3,272.80
04/04/2006	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
04/04/2006	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
11/08/2005	LYNCH, DAVID	CAMPAIGN CONSULTANTS		$2,750.00
12/20/2005	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
01/05/2006	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
02/06/2006	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
11/10/2005	LYNCH, DAVID	CAMPAIGN CONSULTANTS		$2,750.00
10/13/2005	LYNCH, DAVID	CAMPAIGN CONSULTANTS		$2,750.00
01/19/2006	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,750.00
11/07/2005	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$2,611.35
01/19/2006	PAYCHEX		SEE SCHEDULE G	$2,569.67
11/29/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$2,500.00
08/24/2005	PAULE CONSULTING, INC.	FUNDRAISING EVENTS		$2,500.00
12/13/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$2,500.00
12/06/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$2,500.00
09/27/2005	PAULE CONSULTING, INC.	FUNDRAISING EVENTS		$2,500.00
12/13/2005	POWER, LAURA	CAMPAIGN CONSULTANTS		$2,383.29
02/14/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$2,352.28
04/04/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	CAMPAIGN PARAPHERNALIA/MISCELLANEOUS		$2,240.04
08/25/2006	PAULE CONSULTING, INC.	FUNDRAISING EVENTS		$2,216.46
01/04/2006	PAYCHEX		SEE SCHEDULE G	$2,202.85
01/19/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$2,141.21
10/02/2006	ENGLAND, MARY	FUNDRAISING EVENTS		$2,000.00
08/08/2006	PUBLIC OPINION STRATEGIES	POLLING AND SURVEY RESEARCH		$2,000.00
05/31/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		PAYMENT OF ACCRUED EXPENSE	$1,926.92
02/02/2006	PAYCHEX		SEE SCHEDULE G	$1,844.55
10/17/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$1,800.00
07/07/2006	POWER, LAURA		SEE SCHEDULE	$1,680.55

			G	
08/08/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$1,649.55
10/10/2005	LYNCH, DAVID	CAMPAIGN CONSULTANTS		$1,616.65
03/07/2006	PAYCHEX		SEE SCHEDULE G	$1,590.51
10/13/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$1,537.94
09/27/2005	POWER, LAURA	CAMPAIGN CONSULTANTS		$1,500.00
04/28/2006	PAYCHEX	CAMPAIGN WORKERS SALARIES		$1,455.93
11/02/2006	JESSICA MARIE LUSNFORD FOUNDATION		SEE SCHEDULE G	$1,448.00
12/13/2005	LEADER, ANNE	CAMPAIGN CONSULTANTS		$1,416.66
10/31/2006	GOLD RUSH GRILL	FUNDRAISING EVENTS		$1,251.88
12/20/2005	LEADER, ANNE	CAMPAIGN CONSULTANTS		$1,250.00
04/04/2006	POWER, LAURA		PAYMENT OF ACCRUED EXPENSE	$1,247.15
09/14/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$1,170.88
09/13/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$1,135.24
12/20/2005	PAYCHEX		SEE SCHEDULE G	$1,107.03
09/09/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	OFFICE EXPENSES		$1,100.00
10/10/2005	POWER, LAURA	CAMPAIGN CONSULTANTS		$1,100.00
12/04/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$1,055.51
04/05/2006	LYNCH, DAVID	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$1,040.25
04/04/2006	MERCY, ANDREW		SEE SCHEDULE G	$1,000.43
05/31/2006	JC EVANS, INC.	FUNDRAISING EVENTS		$958.86
04/04/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$939.55
02/14/2006	POWER, LAURA		SEE SCHEDULE G	$926.65
12/20/2005	POWER, LAURA		SEE SCHEDULE G	$917.26
08/24/2005	OCCIDENTAL COMMUNICATIONS GROUP		SEE SCHEDULE G	$893.60
01/19/2006	PAYCHEX		SEE SCHEDULE G	$874.57
10/21/2006	WARREN, BECKY		REIMBURSE TRS & CMP	$830.56

			UNDER $500	
10/17/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$824.00
01/19/2006	PAYCHEX		SEE SCHEDULE G	$808.21
05/30/2006	AT&T	OFFICE EXPENSES		$771.03
05/30/2006	THE HARTFORD	OFFICE EXPENSES		$731.08
08/24/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$730.98
09/27/2005	SBC	OFFICE EXPENSES		$724.44
05/31/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	OFFICE EXPENSES		$712.59
11/09/2005	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$711.75
08/31/2005	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$701.00
07/07/2006	WARREN, BECKY	OFFICE EXPENSES		$690.80
05/31/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$689.23
02/14/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		SEE SCHEDULE G	$685.35
01/04/2006	PAYCHEX		SEE SCHEDULE G	$682.88
08/08/2006	WARREN, BECKY	OFFICE EXPENSES		$639.10
10/17/2005	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$625.00
02/02/2006	PAYCHEX		SEE SCHEDULE G	$582.60
12/20/2005	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$576.91
12/04/2006	JESSICA MARIE LUSNFORD FOUNDATION		SEE SCHEDULE G	$557.61
01/19/2006	AT&T	OFFICE EXPENSES		$534.22
08/25/2006	WARREN, BECKY	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$523.20
09/27/2005	UNITED STATES TREASURY	OFFICE EXPENSES		$500.00
10/10/2006	CONTINUING THE REPUBLICAN REVOLUTION	CAMPAIGN LITERATURE AND MAILINGS		$500.00
06/26/2006	US POSTMASTER	POSTAGE, DELIVERY AND MESSENGER SERVICES		$500.00
12/04/2006	OFFICIAL NON-PARTISAN VOTER GUIDE	CAMPAIGN LITERATURE AND MAILINGS		$500.00
04/26/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$472.37

02/10/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$463.55
12/04/2006	WARREN, BECKY		REIMBURSE TRS UNDER $500	$445.82
08/08/2006	LYNCH, DAVID	CAMPAIGN PARAPHERNALIA/MISCELLANEOUS		$435.99
05/01/2006	PAYCHEX	CAMPAIGN WORKERS SALARIES		$431.92
03/08/2006	PAYCHEX		SEE SCHEDULE G	$430.61
07/07/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$421.84
03/30/2006	AT&T	OFFICE EXPENSES		$421.25
01/19/2006	POWER, LAURA	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$411.10
05/31/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	OFFICE EXPENSES		$393.35
12/14/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		REIMBURSE OFC UNDER $500	$371.73
10/10/2005	LYNCH, DAVID	CAMPAIGN CONSULTANTS		$335.51
10/10/2006	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$328.10
09/18/2006	MARROQUIN, MARY	RETURNED CONTRIBUTIONS		$300.00
08/25/2006	WARREN, BECKY	POSTAGE, DELIVERY AND MESSENGER SERVICES		$292.50
04/26/2006	NORCAL ASSOCIATES	FUNDRAISING EVENTS		$291.33
04/04/2006	POWER, LAURA			$283.02
05/31/2006	WARREN, BECKY	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$278.60
11/08/2005	LYNCH, DAVID		REIMBURSE OFC EXP UNDER $500	$273.93
09/09/2005	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$257.80
11/02/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES		REIMBURSE OFC UNDER $500	$239.43
12/04/2006	POWER, LAURA		REIMBURSE CMP UNDER $500	$234.60
12/21/2005	LEADER, ANNE		REIMUBURSE OFC UNDER $500	$233.46
09/09/2005	OCCIDENTAL COMMUNICATIONS GROUP	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$225.90
10/10/2005	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$214.96

05/31/2006	WARREN, BECKY	OFFICE EXPENSES		$211.89
12/20/2005	LEADER, ANNE		REIMBURSE OFC EXP UNDER $500	$209.00
11/21/2005	SBC	OFFICE EXPENSES		$206.66
02/14/2006	AT&T	OFFICE EXPENSES		$191.94
06/26/2006	THE HARTFORD	OFFICE EXPENSES		$185.43
02/14/2006	CUNKLEMAN, JENNIFER		REIMBURSE TRS UNDER $500	$176.11
04/04/2006	WARREN, BECKY	STAFF/SPOUSE TRAVEL, LODGING AND MEALS		$174.81
12/04/2006	GILLIARD BLANNING WYSOCKI & ASSOCIATES	OFFICE EXPENSES		$172.06
10/26/2005	SBC	OFFICE EXPENSES		$170.87
04/04/2006	PACKHAM, KYLE		PAYMENT OF ACCRUED EXPENSE	$162.50
03/21/2006	CUNKLEMAN, JENNIFER		REIMBURSE CMP UNDER $500	$149.55
10/04/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$141.00
08/24/2005	THE KAL GROUP	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$126.77
12/19/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$122.80
10/13/2005	LYNCH, DAVID		REIMBURSE TRS EXP UNDER $500	$122.00
03/02/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$121.75
04/04/2006	SHARON RUNNER FOR ASSEMBLY - 2006	FUNDRAISING EVENTS		$118.61
08/25/2006	ENGLAND, MARY	POSTAGE, DELIVERY AND MESSENGER SERVICES		$117.00
01/04/2006	PAYCHEX	OFFICE EXPENSES		$115.35
08/25/2006	AT&T	OFFICE EXPENSES		$107.94
01/13/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$106.99
03/09/2006	SECRETARY OF STATE		DEPOSIT TO GENERAL FUND - AVOOSKE	$100.00
02/14/2006	SCURO, MIKE	FUNDRAISING EVENTS		$100.00
02/14/2006	SECRETARY OF STATE		DEPOSIT TO GENERAL FUND	$100.00
10/09/2006	VOTERS FOR RESPONSIBLE GOVERNMENT	CAMPAIGN LITERATURE AND MAILINGS		$100.00
04/26/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$96.24

04/10/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$96.24
05/10/2006	PAYCHEX	OFFICE EXPENSES		$81.10
05/24/2006	PAYCHEX	PROFESSIONAL SERVICES (LEGAL, ACCOUNTING)		$81.10
12/22/2005	PAYCHEX	OFFICE EXPENSES		$75.00
06/30/2006	AT&T	OFFICE EXPENSES		$57.99
08/31/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$53.00
08/04/2006	AT&T	OFFICE EXPENSES		$52.21
01/19/2006	PAYCHEX	OFFICE EXPENSES		$50.09
02/15/2006	PAYCHEX	OFFICE EXPENSES		$49.75
09/14/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$49.50
09/09/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	INFORMATION TECHNOLOGY COSTS (INTERNET, E-MAIL)		$47.94
02/15/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$39.65
09/09/2005	GILLIARD BLANNING WYSOCKI & ASSOCIATES	OFFICE EXPENSES		$39.10
11/10/2005	LYNCH, DAVID		REIMBURSE CMP EXP UNDER $500	$37.60
02/02/2006	PAYCHEX	OFFICE EXPENSES		$35.99
03/02/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$34.50
01/27/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$32.95
03/08/2006	PAYCHEX	OFFICE EXPENSES		$31.31
01/30/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$30.00
04/09/2006	PAYCHEX	OFFICE EXPENSES		$30.00
01/31/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$30.00
05/01/2006	PAYCHEX	OFFICE EXPENSES		$29.63
12/20/2005	LEADER, ANNE		REIMBURSE MILEAGE	$24.46
12/02/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$20.00
01/20/2006	PAYCHEX		SEE SCHEDULE G	$18.03
10/13/2005	LYNCH, DAVID		REIMBURSE OFC EXP UNDER $500	$18.00
12/09/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
12/21/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
01/27/2006	TRI COUNTIES	OFFICE EXPENSES		$15.00

	BANK			
01/10/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
01/16/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
12/21/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
12/08/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
12/02/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
01/31/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$15.00
05/01/2006	PAYCHEX	OFFICE EXPENSES		$12.54
07/19/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$10.40
01/06/2006	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$10.05
03/08/2006	TRI COUNTIES BANK	OFFICE EXPENSES		$10.00
12/08/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$6.25
12/15/2005	TRI COUNTIES BANK	OFFICE EXPENSES		$6.00
01/31/2006	PAYCHEX	OFFICE EXPENSES		$4.41
08/08/2005	ARISTOTLE INTERNATIONAL	FUNDRAISING EVENTS		$2.05

BILL ANALYSIS

Date of Hearing: January 10, 2006
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Mark Leno, Chair

AB 231 (Runner) - As Amended: August 15, 2005

SUMMARY : Creates the Sexual Predator Punishment and Control Act which makes numerous changes and additions to provisions of law relating to sex offenders. Specifically, this bill :

1)Provides that if a person, in the commission of a burglary, as specified, assaults another with the intent to commit rape, sodomy, oral copulation or lewd and lascivious acts with a child under 14 years of age, that person shall be punished by imprisonment in the state prison for life with the possibility of parole.

2)Reduces the age differential for the crime of aggravated sexual assault of child from under the age of 14 and 10 or more years younger than the offender to under the age of 14 and seven or more years younger than the offender.

3)Requires that when sentencing an offender on charges of aggravated sexual assault of a child, as specified, the court must impose consecutive sentences if the crime(s) involve separate victims or separate acts, as specified.

4)Provides that every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with the intent to commit a specified offense, shall be punished as if the specified crime was actually attempted.

5)Requires that any person who has been previously convicted of communicating with a minor with the intent of committing a specified sex crime shall be sentenced to an additional five years to be served consecutively.

6)Increases the additional fine imposed on persons convicted of crimes for which they are required to register as sex offenders from $200 to $300 upon the first conviction and from

$300 to $500 upon a second or subsequent conviction.

7)Attempts to transfer the above additional increases to the California Department of Corrections and Rehabilitation (CDCR) to defray the costs of global positioning system monitoring for paroled sex offenders.

8)Makes it an alternate felony/misdemeanor punishable by 16 months, 2 or 3 years in the state prison or by up to one year in the county for any person convicted of possessing material depicting a minor under the age of 18 years of age engaging in or simulating sexual conduct.

9)Makes the attempted possession of materials depicting a minor under the age of 18 engaged in or simulating sexual conduct when the offender has a prior conviction for possession punishable by a term of two, four or six years in the state prison.

10)Deletes the 10-year "washout" period from provisions of law that provide for enhanced sentenced sentences for persons convicted of lewd and lascivious acts with a child under the age of 14 who have suffered specified prior convictions.

11)Expands the "One-Strike" Sex Law to include as an aggravating circumstance the commission of specified sex offenses in concert.

12)Requires that separate terms imposed under the One-Strike Sex Law be imposed consecutively if the crimes involve separate victims or the same victim on separate occasions.

13)Deletes a provision in the One-Strike Sex Law that states

that persons convicted under those provisions are entitled to a 15% credit reduction in sentence.

14)Adds continuous sexual abuse of a child and aggravated sexual assault of a child to the list of crimes for which probation may not be granted if great bodily injury is inflicted in the commission of the crime.

15)Adds continuous sexual abuse of a child, aggravated sexual assault of a child, sodomy, oral copulation, and forcible sexual penetration to the list of offenses which make a person

upon conviction ineligible for probation.

16)States that the parole period of any person who is found to be a sexually violent predator (SVP) shall be tolled until that person is found to no longer be a SVP at which time the period of parole, or any remaining portion of parole shall begin to run.

17)Increases the period of parole from five to ten years for any inmate sentenced under the One-Strike Sex Law or sentenced as a "habitual sex offender".

18)States that any person who has been released on parole and has been convicted of registerable sex offense, as specified, shall be monitored by a global positioning system (GPS) device during his or her parole. The parolee shall be required to absorb the cost of monitoring unless the court finds that he or she is financially unable to do so.

19)Prohibits a registered sex offender from residing within 2,000 feet from any public or private school, or park where children regularly gather.

20)Provides that municipal jurisdictions may enact local ordinances that further restrict the residency of any person who is required to register as a convicted sex offender.

21)Provides that any person who has been convicted of a felony registerable sex offense who is discharged from parole shall be monitored by a GPS for life. The offender is required to pay the cost of the GPS devise unless it is determined that he or she cannot afford the cost.

22)Creates a five-year enhancement to be imposed consecutively for any person administering a controlled substance for the purposes of committing a specified sex offense.

23)Reduces from two to one the number of convictions required to make a person eligible for an evaluation to determine if the person is a SVP.

24)Allows an inmate to be committed to the DMH as a SVP for an indeterminate term rather than for the present two-year term of commitment.

25)Finds and declares that California places a high priority on maintaining public safety through highly trained and skilled law enforcement as well as laws that deter and punish criminal behavior:

a) That sex offenders have a high rate of recidivism and the majority of sexual assault victims are under the age of 18;

b) That child pornography plays some role in molestation of children;

c) That the Internet is being used by sex offenders to lure children and such a crime must be punished accordingly; and,

d) Other declarations regarding the importance of individual elements of this bill.

EXISTING LAW :

1)Provides that "any person who assaults another with the intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Penal Code Section 264.1 (rape or sexual penetration in concert with others), Penal Code Section 288 (lewd conduct with a child or dependent adult) or Penal Code Section 289 (sexual penetration)" is guilty of a felony, punishable by imprisonment for two, four, or six years. [Penal Code Section 220.]

2)Includes the One-Strike Sex Crime Sentencing Law that provides sentences of 15-years-to-life or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true. [Penal Code Section 667.61.]

3)States that the qualifying sex crimes under the One-Strike Sex Law are forcible rape, forcible spousal rape, rape by a foreign object, forcible sodomy, forcible oral copulation, lewd and lascivious acts with a child under the age of 14 accomplished by force or duress, and lewd and lascivious acts with a child under the age of 14 accomplished by other than force or duress where the defendant is not eligible for probation. [Penal Code Section 667.61(c).]

4)Provides that any person who lives with, or has recurring

access to, a child and who engages in three or more acts of substantial sexual conduct or acts of lewd conduct with a child under the age of 14 over a period of at least three-months' time is guilty of the felony of continuous sexual abuse of a child, punishable by a prison term of 6, 12 or 16 years and a fine of up to $10,000. [Penal Code Section 288.5.]

5)Provides that a defendant convicted of a one-strike sex offense is only eligible for probation if he or she is also eligible for probation under Penal Code Section 1203.066, which allows probation for a person convicted of lewd conduct in intra-family cases where the defendant is particularly likely to be rehabilitated and the grant of probation is in the best interests of the child. [Penal Code Section 667.61(c)(7).]

6)States that a defendant convicted of lewd and lascivious conduct that did not involve force or duress but that did involve "substantial sexual contact," with more than one victim, or the use of pornography, is eligible for probation only under the following, limited circumstances: the defendant is the victim's parent, stepparent, relative or member of the victim's household. A grant of probation is in the best interests of the child. Rehabilitation is feasible and the defendant is amenable to rehabilitation. The defendant must immediately be placed in a recognized treatment program for child molesters. The treatment program must meet strict standards, including demonstration of "expertise in the treatment of children who are victims of child abuse, their families and offenders." The program must provide "an integrated program or treatment and assistance to victims and their families." (Penal Code Section 1203.066(c) through (e).]

7)Denies probation for any person convicted of lewd conduct committed by force, violence, duress or menace. [Penal Code Section 1203.066(a)(1).]

8)Defines a "habitual sexual offender" as a person previously convicted of specified sex crimes or kidnapping of a child for lewd conduct and who is convicted in the current case of one of those offenses shall be sentenced to a term of 25-years-to-life on each count of conviction. (Penal Code Section 667.71.) The prior qualifying crimes are:

a) Rape/spousal rape by force, duress, etc. [Penal Code Section 261(a)(1), 262(a)(1)];

b) Rape or sexual penetration in concert (Penal Code Section 264.1);

c) Lewd conduct with a child under the age of 14 [Penal Code Section 288(a) through (b)];

d) Sexual penetration [Penal Code Section 289(a)];

e) Continuous sexual abuse [Penal Code Section 288.5];

f) Sodomy by force or duress, etc. [Penal Code Section 286];

g) Sodomy in concert [Penal Code Section 286(d)];

h) Oral copulation by force, duress, etc. [Penal Code Section 288a(c) through (d)];

i) Kidnapping a child under the age of 14 for lewd conduct by seduction, misrepresentation, etc. [Penal Code Section 207(b)];

j) Kidnapping for sex crimes [former Penal Code Section 208(d)];

aa) Aggravated kidnapping for purposes of specified sex crimes (Penal Code Section 209); and,

bb) Aggravated sexual abuse of a child (Penal Code Section 269); and, conviction in other jurisdiction with elements of an offense described above [Penal Code Section 667.71(c)(14)].

9)Provides that every person who possesses or controls any matter depicting a person under the age of 18 years engaging in sexual conduct or simulating sexual conduct is guilty of a misdemeanor with imprisonment in the county jail up to one year or a fine not exceeding $2,500. If a person has a prior conviction, he or she is guilty of a felony and subject to imprisonment in the state prison for two, four, or six years. It is not necessary to prove that the matter in question is

obscene. (Penal Code Section 311.11.)

10)Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of l8 years engaging in or simulating sexual conduct, with the intent to distribute, exhibit, or exchange such material, is guilty of either a misdemeanor or a felony, punishable by imprisonment in the county jail up to one year or in the state prison for 16 months, 2 or 3 years and a fine not to exceed $10,000. (Penal Code Section 311.1.)

11)Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of l8 years engaging in or simulating sexual conduct for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to $100,000. [Penal Code Section 311.2(b).]

12)Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any matter depicting a person under the age of l8 years engaging in or simulating sexual conduct to distribute, exhibit, or exchange with a minor is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years. It is not necessary to prove commercial consideration or that the matter is obscene. [Penal Code Section 311.2(d).]

13)Provides that any person who hires or uses a minor to assist in the preparation or distribution of obscene matter is guilty of a misdemeanor. If the person has a prior conviction, he or she is guilty of a felony with imprisonment in the state prison for 16 months, 2 or 3 years. (Penal Code Section 311.4.)

14)Provides that any person who hires or uses a minor to assist in the possession, preparation or distribution of obscene matter or for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for three, six, or eight years. [Penal Code Section 311.4(b).]

15)States that every person who writes, creates, or solicits the publication or distribution of advertising or other promotional material, or who in any manner promotes, the sale,

distribution, or exhibition of matter represented or held out by him to be obscene, is guilty of a misdemeanor. [Penal Code Section 311.5.]

16)Provides that an inmate serving a determinate term of imprisonment shall be released on parole for a period of three years unless the parole authority for good cause waives the period of parole and discharges the inmate from custody. A person convicted of "violent" sex offenses - as defined in Penal Code Section 667.5(c) - and sentenced to determinate terms shall be released on parole for a period of five years unless the parole authority for good cause waives the period of parole. [Penal Code Section 3000(b)(1).]

17)Defines a "SVP" as an inmate "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 criminal behavior." [Welfare and Institutions Code (WIC) Section 6600(a).]

18)States that for any subsequent extended commitment, the term of commitment shall be for two years. The term shall commence on the date of the termination of the previous commitment. [Penal Code Section 6604.1(a).]

19)Provides that for the purposes of extended commitments, the person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychiatrist and one practicing psychologist designated by DMH, both of whom must concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody. [Penal Code Section 6601(d).]

20)Provides that if one of the professionals performing the examination for extended commitment does not concur that the person meets the specified criteria and the other professional concludes that the person does meet the criteria, the Director of DMH shall appoint two independent professionals, both of whom must concur that the person meets the criteria. [Penal Code Sections 6601(e) and (f).]

21)Provides that any independent professional designated by the Director of DMH shall not be a state government employee, have

at least five-years' experience in the diagnosis and treatment of mental disorders, and include psychiatrists and licensed psychologists that have a doctoral degree in psychology. [Penal Code Section 6601(g).]

22)Provides that a prisoner found to be a SVP could be civilly confined based on a judicial commitment. A "SVP" is defined as a person who has been convicted of a "sexually violent offense," as specified, against two or more victims for whom he or she received a determinate sentence. A SVP must have a diagnosable 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 criminal behavior. (WIC Sections 6600 to 6608.)

23)Defines "sexually violent offenses" as specified sexual acts (rape or spousal rape, sex crimes in concert, lewd conduct with a child under 14 years, foreign or unknown object rape, sodomy and oral copulation) committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [WIC Section 6600(b).]

24)Defines a "sexually violent offense" as any rape or spousal rape, sex crimes in concert, foreign or unknown object rape, sodomy and oral copulation that is committed against a child under the age of 14 involving substantial sexual conduct. (WIC Section 6600.1.)

25)Provides that when the Director of the CDCR determines that an individual who is in his or her custody may be a SVP, the Director must refer the person to DMH for evaluation. If the DMH determines the person is an SVP, a petition shall be filed for commitment as an SVP. (Penal Code Section 6601.)

26)Provides for a hearing procedure to determine whether there is probable cause to believe that a person who is the subject of a petition for civil commitment as a SVP is likely to engage in sexually violent predatory criminal behavior upon his or her release from prison. (Penal Code Section 6602.)

27)Requires a jury trial at the request of either party with a determination beyond a reasonable doubt that the person is a SVP. (Penal Code Section 6603.)

FISCAL EFFECT : Unknown

COMMENTS :

1)Author's Statement : According to the author, "The Sexual Predator Punishment and Control Act (this bill) enhances penalties, expands parole periods, keeps sex offenders away from schools and places where children frequently play, provides tools for tracking offenders, cracks down on the use of 'date rape' drugs, provides meaningful consequences for child pornography, and confronts child luring. Sexual predators have preyed on the most vulnerable for too long. As a legislature, we cannot continue to stand idly by as the innocence is stripped from children and other defenseless citizens by predators that our state can easily monitor or keep behind bars. This bill will equip law enforcement with the tools it needs to protect California's families from sexual predation. There is no excuse for the crime of sexual predation and our state should have no excuses for failing to protect a victim of this crime."

2)2,000-Foot Residency Restriction Presents Constitutional 5th and 14th Amendment Concerns : The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." The California Constitution also contains due process guarantees. [United States Constitution, Article I, Sections 7 and 15]. The Due Process Clause has been interpreted as a limitation upon the legislative, as well as the judicial and executive branches, of government, preventing arbitrary and unreasonable legislation.

This bill is potentially unconstitutional because it deprives convicted persons of property, specifically his or her home, without due process of law. Because this bill contains no time provision to allow a person to move away from the vicinity of a school, the person would instantly and automatically be in violation of the new law created by this bill upon conviction for a specified offense. A person who owns a home and is subsequently convicted of a specified sex offense would be required to move immediately, resulting in a forced sale. There is no provision for what happens when a school is built within the specified proximity of a convicted person when, prior to the school being built, there was no school within one-quarter mile. There is no provision for a

person living close to where home schooling is taking place. If this bill is to withstand constitutional scrutiny, consider that there is no provision for a person who might come to temporarily reside close to a school when, for example, visiting a relative or staying at a hotel or motel on vacation or business. There is no provision if a person had his or her home destroyed by a natural disaster and needed to stay in an emergency shelter established in a school gymnasium. What would occur if a person was hospitalized in a long-term care facility after an accident and the facility was near a school? It is important to point out that there is no remedy for the state to enforce this residency restriction once the defendant is off parole. Obviously, while the defendant is on parole, CDCR may violate the offender's parole if he or she resides within a certain distance of an off-limits area; but without the threat of parole revocation, there is no way to force the offender to move. Other states provide for either a criminal penalty or civil injunction for those that refuse to move. This bill provides no such remedy. An offender could simply just say, "No, I will not move" and continue residing at that

location.

Second, both the United States Supreme Court and the courts of California have expressly recognized a fundamental constitutional right to travel - "a basic human right protected by the United States and California Constitutions as a whole". [In Re White (1979) 97 Cal.App. 3d 141, 148.] The right to travel includes the right to stay as well as the right to go. [See, e.g., Kent v. Dulles (1958) 357 U.S. 116, 126, "Freedom of movement is basic in our scheme of values." Dunn v. Blumstein (1972) 405 U.S. 330, 338, the right to travel ensures "freedom to enter and abide."] California courts have recognized that the right to travel includes the "concomitant right not to travel." [In re White , supra, 97 Cal.App.3d at pp. 148-149, banishment violates constitutional right to freedom of travel; In re Barbak S . (1993) 18 Cal.App.4th 1077, 1084-1086; People v. Bauer (1989) 211 Cal.App.3d 937, 944.] The right to travel has also been interpreted as prohibiting arrests for such offenses as loitering or roving public streets without identification. [Kolender v. Lawson (1983) 461 U.S. 352.]

Third, the Minnesota Department of Corrections in a report to the Minnesota Legislature in 2003 found that proximity restrictions severely limited already scared residential

options for sex offenders. Also, the report concluded that there was no evidence that residential proximity to schools or parks affect re-offense. Ultimately, the Minnesota Legislature chose not to pass legislation relating to residential restrictions because it "would have the effect of restricting sex offenders to less populated areas, with fewer supervising agents and fewer services for offenders (i.e., employment, education and treatment)." [Minnesota Department of Corrections, Level Three Sex Offenders Residential Placement Issue, 2003 Report to the Legislature , February 2004.] Several claims have been made by Senator Dean Flores that the residency restriction would push many sex offenders into rural central valley areas. The Riverside Press-Enterprise reported, "Fifty-seven percent of Megan's law registrants in San Bernardino County would be restricted under this bill. Forty percent of the Inland urban area from Ontario to Palm Springs by the exclusion zones. To the west, about three-quarters of the Los Angeles metropolitan area would be off limits. In Northern California, 50% of the Sacramento urban area would be restricted. It would be even higher in the area around San Francisco Bay where almost 70% would be covered by the zones. [Jim Miller, "Zoning Out Sex Offenders" Riverside Press-Enterprise, December 31, 2005.]

The author of this bill stated that no change is being made to Penal Code Section 3003, which states that when released from prison the offender must be placed back in the county of last legal residence. However, if the 2,000-foot rule is in effect, CDCR will have to place to place the offender somewhere else regardless of Penal Code Section 3003. In fact, Penal Code Section 3003(b) stated that notwithstanding the basic rule CDCR may place an offender elsewhere if it is in the best interest of the public. Even if the author is correct and the State or the courts determine Penal Code Section 3003 renders the 2,000-foot rule moot, it still affects those that are not on parole.

3)Background Information on GPS : As a condition of release on parole, existing law authorizes the parole authority to require electronic monitoring as long as the device is not used to eavesdrop or record parolee conversations. (Penal Code Section 3004.) Electronic monitoring is a form of "house arrest" with the use of electronic ankle bracelets. Offenders wear devices that permit periodic checks of their whereabouts by telephone. GPS uses satellite tracking operating in a

manner similar to cellular phones. Offenders wear ankle bracelets and carry with them packs containing mobile receivers. When offenders are sleeping or sitting, packs can be placed near them. A monitoring station receives data from all offenders using the system and tracks them constantly. GPS can follow and locate an offender instantly, rather than

merely telling whether a person is home. If the offender tampers with the equipment, moves more than about 150 feet from the receiver, deviates from a schedule, or ventures into forbidden territory, overseers are automatically paged. Not only does GPS follow offenders, GPS can also be programmed with "exclusion zones" where sex offenders are not allowed - for example, the home of a victim or a school.

4)GPS Technology : The use of GPS for parolee tracking provides a level of surveillance not available by any other means. GPS' ability to locate an offender 24 hours per day makes GPS an invaluable tool for parole agents. The GPS is a system of 24 satellites 11,000 miles above Earth. Using GPS tracking, a parolee can be precisely located 24 hours per day, seven days per week. For the system to work, the parolee must carry a GPS receiver, complete with a microprocessor and antennae, to record locations. The parolee carries the device in a waist pack. The parolee must also wear an ankle bracelet equipped with a radio transmitter that works in tandem with the GPS receiver. Thus, if the parolee does not wear both the ankle bracelet and the receiver, the receiver will set off an alarm at the monitoring station. Both pieces of equipment also have tamper-detection features to keep offenders from trying to remove or dismantle them. New technology is being used in California and other states that have only one piece, an ankle monitor, which must be recharged every 12 to 18 hours.

In various degrees, GPS is used to track parolees in Michigan, Florida, Texas, Washington and California. Reported GPS problems include loss of signal creating false alarms, high costs, and required technical training. Lost signals are typical in cars, large buildings, and underground basements. These false alarms must be investigated, which is costly to do so. The Florida Department of Corrections estimates that each parolee on GPS will generate about 10 to 15 false alarms per month. There have also been reports of loss of GPS signals as a result of battery and equipment failure. Furthermore, in testimony offered before the Assembly Committee on Public Safety in November 2005, a Washington State Corrections

representative stated that problems resulted not only from lost signal in urban canyons, but also breaks in the signal because the offender put more than 150 feet from the unit monitor. This occurred even though the offender was still at home. Also, frequent problems occurred with battery life. Offenders are required to recharge a battery very 8 to 18 hours depending on the unit, proving very inconvenient and also resulting in a number of false alarms. In a discussion of the uses of GPS in California, CDCR and DMH representatives speaking before this Committee indicated that GPS is an effective monitoring tool for a small manageable class of offenders.

However, this bill requires tracking all sex offenders released on parole for life and also does not specify that GPS only applies prospectively. It is unclear also whether people who are not on parole now but still required to register pursuant to Penal Code Section 290 would be required to wear a GPS monitor; this bill merely states "discharged offenders". If there are approximately 7,000 adults subject to registration currently on parole, as many as 15,000 adults subject to registration now in prison, and more than 80,000 registered sex offenders in California, tracking more than 100,000 people for life would be impossible given the cost and the limitations of GPS technology. [Legislative Analyst's Office Report, A "Containment Strategy for Adult Sex Offenders on Parole , 1999-2000.] The cost is further exacerbated by the fact that there is no way to force an offender that is no longer on parole to pay for lifetime GPS. Again, with no threat of parole revocation, there is no way the State can compel the offender to pay for GPS.

5)GPS Monitoring is Very Costly : The CDCR estimates that the cost to track parolees utilizing GPS is $8 to $15 per day, per inmate. The annual contract cost per parolee would be $2,920 to $5,470 per year and does not include supervision costs or the cost of the additional personnel needed to monitor the parolees on GPS. Also, the use of GPS tracking requires expensive technical training. The current annual average parolee cost is $2,882. This bill makes reference to increased fees for Megan's Law registration in order to pay for GPS. However, many inmates currently cannot afford the Megan's law fee. If a registrant is not able to pay, he or she is not required to do so. It seems unlikely that raising the fee would generate near enough income to fund a lifetime

GPS provision. This bill also states that the offender shall be responsible for paying for the GPS tracking. However, again, most offenders are indigent and would not be able to afford tracking. Also, portions of this bill state a registrant is to be tracked for life even is he or she is no longer on parole, potentially costing an offender thousands of dollars when he or she is no longer in the custody of the state.

6)History of SVP Law : This bill makes a few different changes to the current scheme of laws relating to SVPs. First, this bill seeks to extend the term of commitment before a mandatory court-ordered review from two years to indefinitely. Second, this bill tolls the period of parole while the offender is committed to DMH, beginning the term if and when the offender is conditionally released from custody. Third, this bill changes the statutory definition of what qualifies an offender as a SVP. Under current law, two or more prior offenses of a particular nature are required for an offender to be eligible for commitment pursuant to the SVP law. This bill requires only one prior offense.

The Sexually Violent Predator Act (SVPA) became effective January 1, 1996. The SVPA created a new civil commitment for SVPs. The Legislature disavowed any "punitive purpose" and declared its intent to establish "civil commitment" proceedings in order to provide "treatment" to mentally disordered individuals who cannot control sexually violent criminal behavior. [See, e.g., AB 888 (Rogan), Chapter 763, Statutes of 1995, Section 1; Senate Committee on Criminal Procedure, Analysis of AB 888 (July 11, 1995).] The Legislature also made clear that, despite their criminal records, persons eligible for commitment and treatment as SVPs are to be viewed "not as criminals, but as sick persons." (WIC Section 6250.) Consistent with these remarks, the SVPA was placed in the WIC, surrounded on each side by other schemes concerned with the care and treatment of various mentally ill and disabled groups. [See, e.g., WIC Section 5000 (Lanterman-Petris-Short Act) and WIC Section 6500 (Mentally Retarded Persons Law).]

The SVP law tries to ensure that sexual predators suffering from mental disorders and deemed likely to re-offend are treated in a secure facility through a civil commitment process. CDCR and the Board of Parole Hearings screen cases to determine if

they meet the criteria specified in the statute. If so, the prisoner is referred to the DMH for clinical evaluation by two clinical evaluators. If both clinical evaluators find that the prisoner meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment. Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause if found, the prisoner is scheduled for a trial. If the jury finds beyond a reasonable doubt that the offender meets the statutory criteria, the prisoner may then be civilly committed to a DMH facility for treatment for two years before a court- ordered review. The offender is examined at least once each year of the commitment and may petition the court for conditional release. At the end of the two-year commitment, the prisoner is evaluated by the court to determine whether a new petition of commitment should be filed.

As of December 1, 2004, there were 490 persons found to be SVPs and committed for confinement and treatment in a secure facility designated by the Director of DMH. There were 194 individuals awaiting trial. According DMH, speaking at a Public Safety Hearing on GPS in November 2005, only four committed offenders have been released - one moved out of state and the remaining three are being closely monitored by DMH.

7)Constitutionality of SVP Law : California's SVP law has been the subject of several legal challenges. The California Supreme Court ultimately upheld the constitutionality of the SVP law. [Hubbart v. Santa Clara County (1999) 19 Cal.4th 1138.] The case raised issues of due process, equal protection and ex post facto. On January 21, 1999, the Supreme Court issued a decision that the SVPA was constitutional both on its face and as applied to the

defendant. In finding the SVPA law constitutional, the California Supreme Court noted that the SVP law was designed to apply to a very limited class of persons:

"The SVP law is narrowly focused on a select group of violent criminal offenders who commit particular forms of predatory sex acts against both adults and children, and who are incarcerated at the time commitment proceedings begin." (Id . at 1153.)

In a case prior to the California Hubbart case, the United

States Supreme Court decided in a 5-4 decision that the Kansas SVPA did not violate the United States Constitution. [Hendricks vs. Kansas (1997) 521 U.S. 346, 369.] The United States Supreme Court's decision in that case upheld the constitutionality of state laws that provide for the civil commitment of sexually violent predators for treatment purposes. The United States Supreme Court revisited the issue of the criteria a state must meet in order to civilly commit a sexual predator. [Kansas v. Crane (2002) 534 U.S. 437.] The Court held that the state must prove that the offender continues to be dangerous, is likely to repeat the crime, and has a serious difficulty in controlling his or her behavior.

8)This Bill Would Treat Similarly Situated SVP Patients Differently than Mentally Disordered Offenders (MDOs), Triggering a Strict Scrutiny Analysis : As mentioned above, this bill seeks to remove the requirement that a court review the patient's commitment status every two years. Instead, under this bill, the patient might never receive an opportunity to dispute his or her status as a mentally ill person. As a general rule, there is a constitutional guarantee of equal protection under the law, meaning that persons similarly situated with respect to the purpose of the law must be similarly treated under the law. [In re Gary W. (1971) 5 Cal.3d 296, 303.] If the person is not similarly situated under the law, an equal protection claims fails at the threshold. The question is not whether persons are similarly situated for all purposes, but whether they are similarly situated for the purpose of the law challenged. [People vs. Gibson (1988) 204 Cal.App. 3rd 1425, 1436.] The Legislature may distinguish between persons or groups in passing legislation. In ordinary equal protection cases not involving suspect classifications, such as race or the alleged infringement of a fundamental interest, the right to vote, or to pursue a lawful occupation, those legislative distinctions are upheld if they have a rational relationship to a legitimate state purpose. However, if the distinction involves a suspect classification or infringes on a fundamental interest, it is strictly scrutinized and is upheld only if it is necessary to further a compelling state interest. [Weber vs. City Council (1973) 9 Cal.3rd 950, 958.] Strict scrutiny is the correct standard of review in California for disparate involuntary civil commitment schemes because liberty is a fundamental interest. The burden then shifts to the State to establish a compelling interest that

justifies the law and demonstrate that the distinctions drawn by the law are necessary to further that state interest. [Conservatorship of Hofferber (1980) 28 Cal.3rd 161, 176; Hubbard vs. Superior Court (1999) 19 Cal.4th 1138; and In re Jesse J. Calhoun (2004) 121 Cal.App.4th 1315, 1354, holding that for the purposes of forced medication, SVPs are similarly situated to MDOs.] Although the United States and the California Supreme Court have both held that laws committing SVPs meet the conditions of strict scrutiny, the reason for that decision is specific and was predicated on the procedural protections in the statute. [See Kansas vs. Hendricks (1997) 521 U.S. 346, Hubbard , at 1153.]

This bill would lengthen the term of commitment for those found to be SVPs before the court-required review every two years. Under the Equal Protection Clause of the 14th Amendment, similarly situated persons must be treated the same when the interest at stake is deemed fundamental meaning that SVPs should not be committed without review for longer periods of time than MDOs or those deemed not guilty by reason of

insanity. The Supreme Court has stated that reviewing equal protection claims of this type requires a review of strict scrutiny meaning that the Legislature would have to show the means of achieving a compelling state interest are narrowly tailored. In this case, there is no indication that extending review would meet a compelling state interest. Judicial economy would likely not be a strong enough state interest to violate the Equal Protection Clause.

9)Constitutional Demands of Due Process Require a Regular Evaluation of the Defendant's Mental Condition : Current law provides several procedural safeguards for committing an offender beyond the court-ordered period of incarceration. Those safeguards include right to counsel, the right to a state-paid psychiatrist and the right to a unanimous jury verdict. (WIC Section 6604.) Moreover, the California and United States Supreme Court have stated that civil commitment for sexually violent offenders must meet the most rigorous form of constitutional review. (Hubbard , at 1153; Hendricks , at 345.) This requirement of due process includes regular review of the offender's mental status. Mandating courts to review an offender's mental status every two years protects his or her due process rights in that it ensures that the offender is still mentally ill. Although the offender may petition the court for annual review, there is no requirement

that the court hold a hearing.

Requiring review every two years ensures that only those offenders who are truly a danger to the community will be confined. Lengthening the term of commitment from two years to an indefinite term may also force the courts to view civil commitment as punitive and hence unconstitutional. Changing the length of the commitment with no evidence that dangerous offenders are being prematurely released only makes it seem that the Legislature is attempting extend the term of incarceration for the predicate crime rather than treating a mental illness.

10)Is One Prior Offense a Sufficient to Identify a SVP ? Nationwide, sex offender commitment laws generally require a showing of some past sexual violence, a current mental disorder, and predicted future sexual violence. While the specific definition varies, most states consider a SVP as any repeat sexual offender who suffers from a behavioral abnormality that makes the offender likely to engage in predatory acts of sexual violence. Twenty-three states have enacted have enacted civil commitment laws over the past decade: Arizona, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Several of those states require that the person be convicted of one prior sexually violent offense before being evaluated further. However, California law required at least two prior specified sexually violent convictions in order to trigger a review by DMH. To change the policy to one prior offense where the crime involves a child represents a substantial policy change with not only fiscal implications but also a treatment and punishment policy shift. As noted above, the Supreme Court in both Hendricks and Crane held the current SVP law constitutional because it was only applied to a narrow class of offenders and those that are very likely to re-offend. Substantially changing the definition to apply to a wide class of sex offenders may force the Court to reevaluate its position.

11)Fiscal Concerns in Requiring only One Prior Offense : According to information provided to the Committee by DMH in 2003, the last time the identical revised definition was considered it was estimated that based upon then current

referral data that bill would have resulted in a 63% increase in referrals, which would require additional staff to perform the initial screening. DMH further estimated that DMH would then perform approximately 621 additional clinical evaluations each year. In addition, due to delays in commitment hearings, district attorneys would call for approximately 169 updated

evaluations prior to going to trial. All additional cases would require approximately 180 court appearances for evaluator testimony. Finally, it was estimated that these proceedings would result in approximately 79 additional SVPs being committed to state hospitals with the attendant housing and treatment costs. SVPs are required to be recommitted every two years. The recommitment process requires evaluators to complete recommitment evaluations and testify in court. An additional 79 SVPs would require 158 recommitment evaluations semi-annually.

12)This Bill Would Unfairly Toll Parole for Those Committed to the Department of Mental Health : Under existing law, an inmate convicted of a "violent" sex offense must be placed on parole for a period not to exceed five years. [Penal Code Section 3001(b)(1).] However, existing law also provides that any finding that a person is a SVP shall not toll discharge or otherwise effect that person's period of parole. [Penal Code Section 3003(a)(4).] Therefore, the parole period of inmates found to be SVPs runs concurrently with their commitment to the DMH. Most, if not all, SVPs' parole terms are for a period of five years as their predatory committing offenses would undoubtedly be "violent" sex offenses. This bill would toll the period of parole of an SVP while he or she is in the custody of the DMH for the purposes of receiving treatment. Upon release, including conditional outpatient release, the SVP would then begin serving his or her period of parole.

The justification for this provision is that an inmate referred to DMH for commitment and who is subsequently found not to be an SVP may have completed parole by the time he or she released. This is incorrect as it would never take five years for a determination as to whether or not a person is a SVP. Most commitment proceedings take less than one year; at the conclusion if a person were found not to be an SVP and released, he or she would be released on parole for the remaining four years of the parole term. Additionally, this bill would require an inmate found to be an SVP who spends seven or eight years in treatment in a state hospital and then

completes one year on out-patient conditional release to begin a brand new five-year parole. Considering that a determination has been made that the person is no longer a danger and he or she has demonstrated that fact while on outpatient release, would not requiring a new five-year parole be a waste of resources?

13)Current Sex Offender Law is Adequate : In the past 25 years, the penalties for sex crimes in California have risen steadily. Penalties for sex crimes are more severe than other crimes, including many particularly violent crimes that do not involve sexual conduct or intent. The sheer number of sex crime penalty statutes is bewildering. Many of the statutes are overlapping. Sentences imposed through the One-Strike Sex Law and Three-Strikes Law, or through the One-Strike Sex Law and the Habitual Sexual Offender Law, can be well over 100 years.

Most sex crimes are classified as violent and serious felonies. Thus, a person with prior sex crime convictions is subject to sentencing under the Three-Strikes Law. The One-Strike Sex Law prescribes a life sentence of either 15-years-to-life or 25-years-to-life for the commission of a sex crime where various aggravated factors about the perpetrator or the manner in which the crime was committed are proved. The Habitual Sex Offender Law prescribes life-term sentences.

Under Penal Code Section 667.51, defendants convicted of lewd conduct are subject to a five-year sentence enhancement for a single prior sex offense or a life term for two or more prior sex crime convictions. It is telling that Penal Code Section 667.51 is seldom applied in sentencing defendants, most likely because of the numerous harsher sentencing provisions enacted (more recently including the Habitual Sexual Offender Law, the Three-Strikes Law, and the One-Strike Sex Law).

14)The One-Strike Sex Law Offers Heavy Penalties : Penal Code Section 667.61 (the One-Strike Sex Law) contains a list of sex offenses; if a person is convicted of any of these offenses, that person is subject to a sentence of either 15-years-to-life or 25-years-to-life depending on the presence of specific aggravating factors.

Penal Code Section 667.61 contains two separate lists of circumstances referred to as "aggravating factors" which, if

one or more are found to be true, triggers the increased punishment. The first set of circumstances contains four serious factors in aggravation: (a) the defendant suffered a previous conviction for one of the enumerated qualifying offenses; (b) aggravated kidnapping which substantially increased the risk of harm; (c) aggravated mayhem or torture on the victim; and, (d) the offense was committed in the course of a residential burglary.

The second set of circumstances contains seven less serious factors in aggravation: (a) simple kidnapping; (b) the offense was committed in the course of a commercial burglary; (c) great bodily injury was inflicted upon the victim; (d) a dangerous or deadly weapon was used; (e) multiple victims; (f) the defendant engaged in tying or binding the victim; and, (g) the defendant administered a controlled substance to the victim by force, violence, or fear. If a defendant is convicted of one of the qualifying offenses and one of the more serious factors is found to be true or two of the less serious factors are found to be true, the punishment is 25-years-to-life in state prison. If the defendant is convicted of one of the qualifying offenses and one of the less serious factors is found to be true, the offense is punishable by 15-years-to-life in state prison.

15)This Bill Creates a New Felony for First-Time Possession of Sexually Explicit Material of Person under the Age of 18 : Existing law provides that possession of material depicting a person under the age of 18 years engaging in sexual conduct or simulating sexual conduct is punishable by up to one year in the county jail. In addition, any person convicted of possessing such material must register as a sex offender for the rest of his or her life. [Penal Code Section 290(a)(2)(A).] Current law imposes relatively severe recidivist penalties - two, four, or six years in prison - for a person who has a previous conviction for possession of material depicting a person under the age of 18 years engaging in sexual conduct. This bill creates felonies for the first-time possession of this material involving minors age 14 years and under. Arguably, a stronger case for increased penalties may be made for persons who possess a substantial quantity of such material and this Committee passed AB 281 (Liu) earlier this year. AB 281 provides that possession of more than 100 items of material depicting a person under the age of 18 years engaging in sexual conduct is an alternate

felony-misdemeanor, punishable by one year in county jail or 16 months, 2 or 3 years in state prison.

16)Current Law Allows Felony Prosecution of Child Pornography : Current law provides for felony prosecution of a person who possesses with the intent to distribute, exhibit or exchange child pornography. (Penal Code Section 311.1 and 311.2.) Similarly, current law provides for felony prosecution for a person who exploits a child by using him or her as a participant in the process of preparing such matter. (Penal Code Section 311.4.) If a person has a prior conviction under the statutory scheme, he or she is subject to imprisonment in the state prison as well as increased fines. (Penal Code Section 311.9.) A person who possesses material depicting persons under the age of 18 years engaging in actual or simulated sexual conduct is subject to imprisonment in the county jail up to one year. If the person re-offends, he or she can be sentenced to prison for two, four, or six years. Existing law provides significant penalties. For example, a person found guilty of possessing the prohibited material can be incarcerated for a substantial period of time. As a condition of probation, a judge can order that the person not possess child pornography and that his or her person, place of residence, and car are subject to a warrantless search by a peace or probation officer. If the person on probation continues to possess the prohibited material, he or she can be sentenced to prison for two, four, or six years. (Penal Code Section 311.11.)

This bill creates a felony for a first-time offense of possession of matter showing actual or simulated sexual conduct by a minor. While there is no question that sexual exploitation of minors is harmful, the current statutes are complex and comprehensive. Under existing law, substantial

prison sentences and fines are available to punish any egregious conduct.

17)This Bill Makes Contacting a Minor Punishable as an Attempt : Existing law provides that an attempt to commit a crime consists of two elements, namely a specific intent to commit a crime and a direct but ineffectual act done toward its commission. (Penal Code Section 664.) In determining whether such an act was done, it is necessary to distinguish between mere preparation and the actual commencement of the doing of the criminal deed. Mere preparation, which may consist of

planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt. (CALJIC 6.00.) This bill makes it unlawful for any person to contact or communicate with a minor with the intent to commit specified sex and abusive crimes against the minor.

Under the law, contacting or communicating with a minor with specific intent to commit an enumerated crime would be considered "arranging to commit a crime" and would be considered mere preparation rather than a direct but ineffectual act in the commission of the crime. Thus, the conduct proscribed in this bill does not rise to the level of what is traditionally considered an attempt to commit a crime. "Mere preparation" to commit a crime, which this bill prohibits, under traditional common law and existing statutes is not unlawful. This bill punishes a person for having criminal intentions or thoughts.

Additionally, this bill not only makes preparation to commit a crime unlawful but punishes preparation as an attempt. Generally, an attempt is punishable by a term of imprisonment of one-half the term of imprisonment prescribed upon conviction of the offense attempted. Therefore, contacting a minor with the intent to commit lewd and lascivious acts upon a child under the age of 14 years is punishable by one and one-half, three, or four years in the state prison. Penal Code Section 272(b)(1) (luring) is only punishable as either an infraction or as a misdemeanor, with a maximum term of imprisonment of six months in the county jail. Should the conduct proscribed by this bill which legally does not rise to the level of an attempt to commit a crime be punished the same as if there were an actual attempt?

18)Elements of this Bill are Largely Duplicative of Existing "Luring" Statute : AB 2021 (Steinberg), Chapter 621, Statutes of 2000, created a new infraction/misdemeanor for an adult 21 years of age or older to knowingly contact a minor 12 years of age or less for the purpose of luring the minor away from his or her home or other location for any purpose without the consent of the minor's parent or legal guardian. Similarly, this bill makes it unlawful for any person to contact a minor with the intent to commit child abuse, sodomy, oral copulation, lewd and lascivious acts upon a child under the age of 14 years, or possessing obscene matter. Thus, this

bill would apply to any person, rather than an adult 21 years of age or older, and would eliminate the requirement that the person lure or persuade the child to leave his or her home.

However, none of the more restrictive targeted purposes in this bill (i.e., child abuse, child molestation, oral copulation, or sodomy) could be accomplished without first luring the child from his or her home. If this were to be accomplished, the person would be in violation of the existing "luring" statute. In light of existing law, is this bill necessary? In view of the state's existing budgetary crisis, should the Legislature be creating new crimes at this time?

19)Use of an Element of the Offense as an Enhancement : This bill creates a five-year enhancement for any person who, in the commission of a rape, administers a controlled substance to effectuate the rape. Existing law states that a defendant is guilty of rape if he or she uses a controlled substance to render the victim unconscious. [See Penal Code Section 289(e)]. An enhancement based on an element of the underlying

crime or something inherent in the underlying crime is generally invalid. "The essence of aggravation relates to the effect of a particular fact which makes the offense distinctively worse than the ordinary." [People v. Price (1984) 151 Cal. App. 3d 803, 812-813; People v. Moreno (1982) 128 Cal. App. 3d 103, 110.] Under current law, the rape of a person using a specified controlled substance is punishable by a term of three, six or eight years. An element of this offense is the use of the controlled substance to commit the rape. It is not proper to sentence the defendant to a term of commitment for the crime of rape with use of a controlled substance and an enhancement for the same crime because the element of use of a controlled substance is the same.

20)Arguments in Support :

a) City of Corona, Office of the Mayor states, "According to the United States Department of Justice, sexual predators have a higher recidivism rate than other criminals and due to the heinous nature of their crimes have a more sinister effect on their victims. In order to prevent the reoccurrence of sex offenses by known sex offenders and safeguard our neighborhoods, it is imperative that we enact stricter regulations and more stringent penalties for sexually based offenses especially those

committed against children.

b) Crime Victims United of California states, "This bill is modeled after the well-known 'Jessica's Law' which was enacted in Florida after the tragic slayings of two children by a serial sexual predators. More specifically, this bill among other things would mandate sexual offenders where GPS tracking devises upon their release and for the rest of their lives, establish 'predator-free zones' that would help ensure the safety of our most vulnerable population at playgrounds and around schools, increases parole terms for offenders, protects children from Internet luring, and more. Florida has taken the lead in making sure that convicted sexual offenders who target children are tracked for the rest of their life upon their release form prison. Should not California do the same to help ensure the safety of its children?

"California has roughly 63,000 registered sex offenders. However, this does not account for all those offenders that should be registered and have not done so. How can we protect our children if we do not even know where the sex offenders are? Prevention and knowledge of an offender's whereabouts is a high priority helping parole agents and local law enforcement maintain public safety in California communities. Without this information, public safety and the safety of our most vulnerable populations will continue to be compromised."

21)Arguments in Opposition :

a) American Civil Liberties Union states, "This bill comprises a potpourri of sentence increases, parole modifications and other restrictions on those convicted of certain sex offenses. These changes are excessive, disproportionate, expensive, and will do little to protect public safety. The Legislative Analyst's Office has indicated that the costs to the State could 'potentially be in the low hundreds of millions of dollars annually primarily to increased State prison terms, parole supervision, and mental health program costs. These costs would grow significantly in the long term.' Moreover, the provisions imposing mandatory GPS tracking on offenders no longer on parole and prohibiting registered sex offenders from residing within 2,000 feet of a school or park are

both constitutionally suspect."

b) California Public Defenders Association (CDPA) states, "This bill is totally flawed. In CPDA's opinion is based on statistics about sexual re-offending that are not supported by the majority of researchers in the field. Sex

offenders have a relatively low rate of recidivism. Released prisoners with the highest re-arrest rates were robbers (70.2%); burglars (74%); larcenists (74.6%); motor vehicle thieves (78.8%); those in prison for possessing or selling stolen property (77.4%); and those in prison for possessing, using or selling illegal weapons (70.2%). Within three years, 2.5% of released rapists were arrested for another rape and 1.2% of those who had served time for homicide were arrested for homicide. (Langan, Patrick A, & Levin, David J., Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, June 2002).

"Additionally, this bill substantially increases the costs of our justice system in a way that will produce little tangible benefit. For instance, recent estimates of the costs of incarcerating elderly, often sick, inmates is now $70,000 annually. The various provisions extending life statutes and doing away with good credits will virtually ensure that many more elderly sick offenders will be incarcerated. Additionally, lifetime GPS monitoring of sex offenders, most of whom will be unable to pay the costs, is enormously expensive. The State will have to pick up the tab.

"This bill would also result in thousands of additional people being committed to the Sex Offender Commitment Program. The Budget Act of 2001 included a total of $41.583 million for costs associated with the Sex Offender Commitment Program. This included $3.751 million appropriated in departmental support for activities associated with program implementation and evaluations and court costs for persons referred from CDCR as potentially meeting the SVP criteria. A total of $44.405 million was appropriated to the state hospitals. This funding supports a total of 403 level-of-care positions as Atascadero State Hospital to staff 427 beds dedicated to the Sex Offender Commitment Program population. This works out to about $104,000 per year to hospitalize each SVP and does not

include court costs and evaluations. Some states have examined California's civil commitment program and found that it is too expensive, opting instead to provide sex offender treatment while the person is in prison. Perhaps all of the money this bill will cost would be better spent doing just that. We may actually prevent a crime or two that way."

22)Related Legislation :

a) AB 603 (Spitzer) would have tolled the period of parole of an inmate in CDCR's custody who has been committed by DMH as a SVP until the person has been discharged from the commitment. AB 603 failed passage in this Committee and was returned to the Assembly Chief Clerk.

b) AB 1153 (La Suer) provides that any person who contacts or communicates with a minor with intent to commit child abuse or specified sex offenses shall be punished the same as if it were an attempt to commit the specified offense. AB 1153 failed passage in this Committee, was granted reconsideration, and has not been rescheduled for hearing.

c) AB 1551 (Runner) provides that any person who kidnaps a child under the age of 14 years to commit lewd and lascivious acts upon the child shall be imprisoned in the state prison for life with possibility of parole. AB 1551 failed passage in this Committee, was granted reconsideration, and has not been rescheduled for hearing.

d) AB 1257 (Umberg) makes possession with intent to distribute sexually explicit material involving minors and employment of a minor to assist in specified crimes involving sexually explicit material involving minors an alternate felony-misdemeanor. AB 1257 has not been heard by the Senate Public Safety Committee.

e) SB 864 (Poochigian) lengthens the period of civil commitment for those found to be SVPs from two years to four years. SB 864 failed passage in this Committee, was granted reconsideration, and has not been scheduled for hearing.

f) AB 240 (Bermudez) would have prohibited a person who is on parole for child molestation or continuous sexual abuse

of a child from residing within one-quarter mile of any public or private school, including any or all of Grades K-12, inclusive. AB 240 was vetoed by the Governor.

g) AB 1152 (La Suer) requires every parolee defined as a "high-risk" sex offender to be monitored by a GPS. AB 1152 is being held on the Assembly Appropriations Committee's Suspense Calendar.

h) AB 1484 (Wyland) would have expanded the definition of a "SVP" to include a person who commits a single sexually violent offense against a minor under the age of 14, which allows that person to be committed to DMH with one qualifying offense instead of the two currently required. AB 1484 failed passage this Committee and returned to the Assembly Chief Clerk.

i) AB 221 (Bogh) would have stated that every person convicted of a sexually violent felony shall be ineligible to earn credits on his or her term of imprisonment. AB 221 failed passage in this Committee and was returned to the Assembly Chief Clerk.

REGISTERED SUPPORT / OPPOSITION :

Support

Big Brothers Big Sisters of Greater Los Angeles and the Inland Empire
California District Attorneys Association
California Peace Officers' Association
California Police Activities League
California Police Chiefs Association
California Probation, Parole and Correctional Association
California Sexual Assault Investigators' Association
California State Sheriffs' Association
California State Sheriffs' Association
City of Corona, Office of Mayor Darrell Talbert
County of San Bernardino, Board of Supervisors
Crime Victims United
Governor's Office of Planning and Research (Sponsor)
Office of the District Attorney, San Bernardino
San Benito Board of Supervisors
San Bernardino County Sheriffs' Office
Western Riverside Council of Government

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association
2 Private Citizens

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BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Carole Migden, Chairwoman S
2005-2006 Regular Session B

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SB 1128 (Alquist)
As Amended March 7, 2006
Hearing date: March 15, 2006
Government and Penal Codes (URGENCY)
JM/AA:br

SEX OFFENDERS

HISTORY

Source: Author

Prior Legislation: None equivalent to this bill; others on the same general subject are too numerous to list

Support: Santa Clara County District Attorney's Office; Peace Officers Research Association (PORAC); Office of the Attorney General; California Police Chiefs Association; Community Solutions; California District Attorneys Association

Opposition:one individual

KEY ISSUE

SHOULD THE "SEX OFFENDER PUNISHMENT, CONTROL AND CONTAINMENT ACT OF 2006" BE ENACTED, AS SPECIFIED?

PURPOSE

The purpose of this bill is to enact the "Sex Offender Punishment, Control and Containment Act of 2006," which

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includes the following provisions: 1) creates a new crime for child luring that includes within its scope police sting operations, as specified; 2) creates a new 25 to life crime for specified sex crimes against young children, as specified; 3) creates a new loitering statute prohibiting sex offenders from loitering around school grounds and other places where vulnerable persons congregate, as specified; 4) increases and recasts penalties for child pornography, as specified; 5) states legislative intent to establish child safety programs; 6) requires each county to establish a SAFE team, as specified; 7) requires recidivism risk assessments for all registered sex offenders, as specified; 8) enhances parole and probation provisions for sex offenders, as specified; 9) extends parole periods for all violent sex offenses; 10) imposes indeterminate terms for sexually violent predators, with minimum constitutional requirements; 11) proposes largely technical sentencing reforms concerning specified sex offenses; 12) requires the Department of Justice to update the Megan's Law database and provide increased information on the Megan's Law Web site; 13) makes changes to sex offender registration provisions, as specified; and 14) enhances the information available on the Megan's Law Web site.

CHILD LURING (Sec. 7)

Existing Law

Existing law provides that any person who by act or omission persuades, induces, or commands a person under the age of 18 years to disobey a lawful order of the juvenile court or causes a minor to remain a delinquent or dependent child is guilty of contributing to the delinquency of a minor. (Pen. Code 272,

subd. (a)(1).)

Existing law provides that an adult stranger 21 years of age or older who knowingly contacts or communicates with a minor 12 years of age or younger, who knew or should have known that the minor is 12 years of age or younger, for the purpose of

(More)

persuading, transporting, or luring the minor away from his or her home or known location, without consent, is guilty of either an infraction or a misdemeanor. (Pen. Code 272, subd. (b)(1).)

Existing law provides that the crime of luring a child from his home does not apply to contact made by a person 1) in an emergency, or 2) in the course and scope of employment, or 3) to contact made by a volunteer for a recognized civic or charitable organization. (Pen. Code 272, subd. (b)(2) and (4).)

Existing law provides that an infraction is not punishable by imprisonment. (Pen. Code 19.6.)

Existing law provides that a person charged with an infraction is not entitled to a trial by jury or a public defender or other counsel appointed to represent him or her at public expense. (Pen. Code 19.6.)

Existing law provides that a person who attempts to commit a crime, but who fails to commit the crime or who is prevented from doing so, shall generally receive one-half the sentence normally imposed for the completed crimes. Certain exceptions apply; the punishment for attempted, premeditated murder is life in prison with the possibility of parole. (Pen. Code 664.)

Existing law provides that a person is guilty of an attempt to commit a crime where he or she specifically intends to commit the crime and takes a direct, but ineffectual, step towards its commission. (Pen. Code 21a; 1 Witkin & Epstein, Cal. Crim. Law (3d Ed. 2000) 53.)

Existing law provides that every person who "annoys or molests" a minor is guilty of a misdemeanor, punishable by up to one year in a county jail, a fine of up to $1,000, or both. (Pen. Code 647.6.) Decisional law has interpreted this crime to include an element that the perpetrator had an abnormal or unnatural sexual interest in children. (People v. McFarland (2000) 78

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Cal.App.4th 489.)

A person who has been previously convicted of this offense is guilty of a felony.

A person who committed this crime after entering a residence without consent is guilty of an alternate felony-misdemeanor.

A person who has been previously convicted of a specified sex crime that involved a victim under the age or 16, or a previous felony conviction under Section 647.6, or a specified prior lewd conduct (288) conviction, or a conviction for using a minor under the age of 14 in the production of illegal pornography, is guilty of a felony, punishable by a prison term of 2, 4 or 6 years.

This Bill

This bill creates a new crime and sentencing scheme concerning persons with an unnatural or abnormal sexual interest in minors

who contact minors with the intent to engage in sexual activity. This new crime describes a range of prohibited conduct and sets corresponding penalties. This new crime is drawn from a long-standing statute (Pen. Code 647.6) that prohibits a person who has an abnormal sexual interest in children from annoying or bothering children. This crime includes the following provisions:

A person who, motivated by abnormal or unnatural sexual interest in children, arranges a meeting with a minor, or a person he or she believes to be a minor, for the purpose of engaging in lewd conduct, or exposing his or her genitals, genital area or rectal area, or for having the child do so is guilty of a misdemeanor, punishable by imprisonment in county jail for up to one year, a fine of up to $5000, or both.

If the person has been previously convicted of this crime, or any offense for which the person must register as a sex

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offender, the person is guilty of a felony.

If the person goes to the arranged meeting place at or about the arranged time, the person is guilty of a felony and shall be punished by imprisonment in a state prison for 2, 3 or 4 years, and a fine of up to $10,000.

This bill specifically provides that "prosecution under this section shall not prohibit prosecution under any other provision of law."

LOITERING IN AREAS WHERE THERE ARE VULNERABLE POPULATIONS - SEX OFFENDERS (Secs. 35 and 36)

Current law generally prohibits sex offenders from going into any school building or upon any school ground or adjacent street or sidewalk, unless the person is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief administrative officer of that school, if they remain there after being asked to leave, as specified. (Penal Code 626.8.)

This bill would revise this provision to remove from its text the reference to registered sex offenders.

This bill would enact a new crime to provide that any registered sex offender who comes into any school building or upon any school ground, without lawful business thereon or written permission from the chief administrative official of that school, or who loiters about any street, sidewalk, or public way adjacent to any school building, school grounds, public playground, or other youth recreational facility where minors are present without lawful business thereon, is guilty of a misdemeanor. Under this bill , no request to leave would have to be made for the crime to apply.

This bill additionally would provide that any registered sex offender whose victim was an elderly or dependent person, as

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specified, who comes onto any property where elderly or dependent persons reside without lawful business thereon or written permission from the director of the facility, is guilty of a misdemeanor.

This bill would impose fine and jail time punishments, as specified.

CHILD SAFETY PROGRAMS (Sec. 57)

This bill states the legislative intent to create school-based programs to promote child safety and prevent child abductions.

"SAFE" TEAMS

Current law establishes the "County Sexual Assault Felony Enforcement" Team program, which authorizes any county to "establish and implement a sexual assault felony enforcement (SAFE) team program," as specified. (Penal Code 13887.)

Current law requires that the mission of SAFE "shall be to reduce violent sexual assault offenses in the county through proactive surveillance and arrest of habitual sexual offenders, as defined in Section 667.71, and strict enforcement of registration requirements for sex offenders pursuant to Section 290. . . . The proactive surveillance and arrest authorized by this chapter shall be conducted within the limits of existing statutory and constitutional law." (Penal Code 13887.1.)

This bill would revise this mission to include the following:

> (c) The mission of this program shall also be to provide community education regarding the purposes of (sex offender registration and Megan's Law). The goal of community education is to do all of the following:
> (1) Provide information to the public about ways to protect themselves and families from

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> sexual assault.
> (2) Emphasis of the importance of using the knowledge of the presence of registered sex offenders in the community to enhance public safety.
> (3) To explain that harassment or vigilantism against registrants may cause them to disappear and attempt to live without supervision, or to register as transients, which would defeat the purpose of sex offender registration.

Current law provides that regional SAFE teams may consist of officers and agents from the following law enforcement agencies:

> Police departments.
> Sheriff's departments.
> The Bureau of Investigations of the Office of the District Attorney.
> County probation departments. (Penal Code 13887.2.)

Current law provides that, in addition, to "the extent that these agencies have available resources, the following law enforcement agencies:

> (1) The Bureau of Investigations of the California Department of Justice.
> (2) The California Highway Patrol.
> (3) The State Department of Corrections.
> (4) The Federal Bureau of Investigation." (Penal Code 13887.2(e).)

Current law states the following objectives for this program:

> To identify, monitor, arrest, and assist in the prosecution of habitual sexual offenders who violate the terms and conditions of their probation or parole, who fail to comply with the registration requirements of Section 290, or who commit new sexual assault offenses.

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To collect data to determine if the proactive law enforcement procedures adopted by the program are effective in reducing violent sexual assault offenses.

To develop procedures for operating a multijurisdictional regional task force. (Penal Code 13887.3.)

Current law provides that "[n]othing in this chapter shall be construed to authorize the otherwise unlawful violation of any person's rights under the law." (Penal Code 13887.4.)

This bill would require every county to establish a SAFE team.

THE SEXUALLY VIOLENT PREDATOR ("SVP") CIVIL COMMITMENT LAW (Secs. 53; 61 et seq.)

Basic Governing Provisions and Definitions in SVP Law

Existing Law - Background

Existing law includes basic constitutional principles applicable to involuntary civil commitment. As described in In re Howard N. (2005) 35 Cal.4th 117, 127-128: "The high [United States Supreme] court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. Moreover, it is indisputable that involuntary commitment to a [psychiatric] hospital after a finding of probable dangerousness . . . can engender adverse social consequences to the individual." (Ibid, quoting Addington v. Texas (197) 441 U.S. 418, 425.)

Under current law , the Sexually Violent Predator (SVP) law, provides for the civil commitment for psychiatric treatment of a prison inmate found to be a sexually violent predator after the person has served his or her prison commitment. (Welf. & Inst. Code 6600, et seq.)

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SVP Commitment Standards, Definitions and Related Provisions

Existing Law

Existing law defines a sexually violent predator as an inmate "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 criminal behavior." (Welf. & Inst. Code 6600, subd. (a).)

Existing law defines a "sexually violent offense" as one of the following crimes when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (Welf. & Inst. Code 6600, subd. (a).):

- Rape or spousal rape. (Pen. Code 261, subd. (a)(2), 262, subd. (a)(1).)
- Rape or sexual penetration in concert. (Pen. Code 264.1.)
- Lewd conduct. (Pen. Code 288 subds. (a) or (b).)
- Sexual penetration. (Pen. Code 289, subd. (a).)
- Sodomy. (Pen. Code 286.)
- Oral Copulation. (Pen. Code 288a.)

Existing law also describes a sexually violent offense as any crime against a child under 14 years of age that involved substantial sexual conduct, which is further defined as penetration of the vagina or rectum, oral copulation, or masturbation by the perpetrator or victim. (Welf. & Inst. Code 6600.1.)

Existing law provides that the details of a prior qualifying conviction - most importantly used to establish that an offense was committed by force or duress - can be proved by documentary evidence, including preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and Department of

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Mental Health ("DMH") evaluations. (Welf. & Inst. Code 6600, subd. (a)(3).)

Existing law provides that a qualifying conviction for a sexually violent offense must also fit in one of the following categories:

- A conviction that resulted in a determinate prison term;
- A conviction prior to July 1, 1977, that resulted in an indeterminate prison term;
- A conviction from another jurisdiction that includes all the elements of a qualifying sexually violent offense under California law;
- A conviction under a predecessor statute that includes all the elements of a sexually violent offense;
- A prior conviction for a sexually violent offense for which the defendant received a grant of probation;
- A prior finding of not guilty by reason of insanity for a sexually violent offense; or
- A conviction resulting in a finding that the person was a mentally disordered sex offender.

Existing law defines a "diagnosed mental disorder" as one that includes "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." (Welf. & Inst. Code 6600, subd. (c).)

Existing law defines predatory sexual acts as those committed against a stranger, casual acquaintance who has no substantial relationship with the perpetrator, or a person with whom the alleged SVP established a relationship for purposes of victimization. (Welf. & Inst. Code 6600, subd. (e).)

Existing law does not require that a defendant's prior qualifying convictions be predatory. (People v. Torres (2001) 25 Cal.4th 680.) Only a defendant's likely future predatory

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sexual behavior need be established. (People v. Hurtado (2002) 28 Cal.4th 1179.)

Existing law implements the SVP law as outlined below:

- The SVP law applies to an inmate serving a state prison term or a parole revocation term.
- The law requires evaluation by two specified mental health professionals according to protocols established by DMH.
- The evaluation must be done at least six months prior to release from custody, unless the Department of Corrections received the inmate with less than nine months to serve, or court or administrative action modified the inmate's sentence.
- DMH then requests the prosecutor from the county of commitment to file a petition for involuntary civil commitment and the superior court determines probable cause that the inmate is an SVP.
- If the court finds probable cause, a formal trial upon proof beyond a reasonable doubt is held.
- If the state prevails, the SVP is committed to DMH for two years of treatment, with additional two-year commitments upon successful new petition proceeding. (Welf. & Inst. Code 6601.)

Existing law provides that the evaluators must agree that the inmate meets the statutory criteria for commitment before the case can be submitted to the district attorney for filing. If the evaluators disagree, additional, independent evaluators are appointed. The second pair of evaluators must agree that the person meets the requirement for SVP commitment or the case cannot proceed. (Welf. & Inst. Code 6601, subds. (c)-(e).)

This Bill

This bill provides that a sexually violent offense includes

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kidnapping (as defined under Penal Code 207 or 209) with the intent to commit one of a list of specified sex crimes.

This bill adds assault with intent to commit a sex crime (Pen. Code 220 - essentially a combination of an attempted sex crime and an assault) as a qualifying prior SVP crime.

This bill changes and expands the definitions and descriptions of qualifying prior convictions so as to define such crimes generically in terms of how the crime was committed - by force, fear or duress, including threats of future retaliation - instead of by particular crime sections and subdivisions. For example, if an oral copulation was prosecuted only under a section defined in terms of the age difference between the perpetrator and the victim but the crime also involved force or fear, this would constitute a qualifying SVP crime under this bill, when it likely would not so qualify under existing law.

Review of SVP Status, Conditional Release under Treatment and Unconditional Release

Existing Law

Existing law provides that a person committed to the custody of DMH as an SVP shall have a current examination of his or her mental condition made at least once every year. (Welf. & Inst. Code 6605, subd. (a).)

Existing law provides that unless the person waives the right to petition for conditional release to a community treatment program (Welf. & Inst. Code 6608), the superior court annually must conduct a "show cause hearing" to determine whether "probable cause exists to believe that the committed person's

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diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged." (Welf. & Inst. Code 6605, subd. (c).)

Existing law provides that if the court finds probable cause in the annual review that the SVP patient no longer presents a danger of committing sexually violent offenses, the court shall order a trial to determine if the patient should be discharged. At trial, the state has the burden to prove beyond a reasonable doubt that the patient is dangerous. (Welf. & Inst. Code 6605, subds. (c)-(d).)

Existing law provides that if the Director of DMH finds that the mental disorder of a person committed as an SPV has changed such

that the person is not likely to commit acts of predatory sexual violence while in the community, the director shall recommend conditional release of the person. The recommendation shall be given to the committing court, the (prosecuting) county attorney and the person's attorney. The court shall then set a hearing on the matter. (Welf. & Inst. Code 6607.)

This Bill

This bill , in its provisions concerning annual review of SVP status, the show cause hearing, probable cause findings and the resulting trial based on a probable cause finding, is drawn from the Washington State processes. (See Comment 3, infra.)

This bill provides that the annual examination and report of the mental status of an SVP patient shall consider whether or not the patient currently meets the definition of an SVP, and whether or not the patient can be conditionally released with supervision, or unconditionally released.

This bill provides that DMH, in the form of a declaration, shall report to the court as to results of the annual examination.

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This bill provides that if DMH determines that an SVP patient no longer meets the statutory definition of an SVP, or that the patient can be safely released conditionally, DMH shall authorize the person to petition for conditional release or unconditional discharge.

This bill provides that at the time of the issuance of the annual report, the SVP patient shall be informed of his or her right to petition for conditional or unconditional release at a trial.

This bill provides that a trial shall be ordered where the defendant establishes probable cause to believe that he or she is no longer an SVP, or that he or she can be safely conditionally released under supervision.

This bill provides that, if the patient does not affirmatively waive the right to petition for conditional or unconditional release, the court shall set a show-cause hearing to determine whether there is probable cause that 1) the patient can be safely conditionally released under supervision, and 2) whether the patient no longer is an SVP.

This bill provides that the court at the show-cause hearing shall consider documentary evidence.

This bill provides that the SVP patient may be represented by counsel at the show-cause hearing, but the patient does not have a right to be present.

This bill provides that at the show-cause hearing, the state shall present prima facie evidence 1) that the person continues to meet the definition of an SVP, and 2) that the person cannot be safely released into the community under supervision.

This bill provides that in presenting prima facie evidence the state can rely on the annual report.

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This bill provides that the person can present responsive declarations and affidavits to which the state can reply.

This bill provides that the court shall set a trial if the court finds either 1) the state failed to present a prima facie case that the person continues to be an SVP or that he cannot be safely released under supervision, or 2) that probable cause exists that the person no longer fits the definition of an SVP or that the person can be safely released into the community under supervision. This bill requires the court to set a trial on either or both issues, depending on the results of the show-cause hearing.

This bill provides that, at the show-cause hearing, if the court has not previously considered the issue of whether or not the person can be safely released into the community under supervision, the court shall consider this issue.

This bill provides that if the court orders a trial, the state shall have the burden to prove beyond a reasonable doubt that 1) the person continues to meet the definition of an SVP, or 2) the person can be safely released into a less restrictive alternative in the community under supervision. In setting the trial, the court shall frame the issues to be determined in the trial.

This bill , as particularly concerns a trial on conditional release, provides that the state has the burden to prove that either conditional release is either 1) not in the best interests of the person, or 2) any less restrictive alternative and conditional release would not include conditions that would adequately protect the community.

This bill provides that either the state or the person can demand a jury trial if, pursuant to the show-cause requirements described above, a trial is ordered.

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This bill provides that the person shall be entitled to all the constitutional protections available at the original commitment trial.

This bill provides that a new trial on the status of an SVP can only be ordered if the probable cause includes evidence from a licensed professional of the following:

Physiological changes, such as paralysis, stroke, et cetera, that renders a person permanently unable to commit a sexually violent act; or

Changes in mental condition brought about by positive response to treatment that renders the person safe for conditional or unconditional release.

This bill provides that a change in a single "demographic" factor - age, marital status, gender - does not constitute a change justifying probable cause.

This bill provides that jurisdiction of the court over a conditionally released person continues until the person is unconditionally discharged.

This bill provides that the court must find all of the following before ordering conditional release:

The person will be treated by a qualified treatment provider;
The treatment provider has presented a specific course of treatment, has agreed to assume responsibility for treatment and will regularly report to the court, the prosecutor, and DMH;
Housing exists that is sufficiently secure to protect the community, and the person or agency providing housing has

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agreed to accept the person and provide the necessary level of security;
The agency or person providing housing must agree to provide notice that the person has left his residence;
The released person agrees to comply with the conditions imposed by the court and to comply with the treatment provider; and
The person shall comply with supervision of DMH or CDCR.

This bill provides that at the close of evidence at the trial, or through summary judgment proceedings at the show-cause hearing, if the court finds that that there is no legally sufficient basis to present the issues of release to a jury, the court shall grant a motion by the state on the issue of conditional release as a matter of law.

This bill provides that the court, in ordering conditional release, shall impose all conditions necessary to ensure the safety of the community and compliance with the treatment program.

This bill provides that if the person cannot be released such that compliance with conditions of release cannot be met and community safety assured, the person shall be remanded to the custody of the secure treatment facility in DMH.

This bill provides that any person or entity designated to provide treatment or other services shall agree in writing to provide treatment, monitoring and supervision under the SVP release statutes.

This bill provides that a person providing services, treatment or monitoring may be compelled to testify and all evidentiary privileges waived.

This bill provides that the court shall review the case of a conditionally released person each year at a minimum. This bill

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provides that the sole issue to be considered at the review shall be whether or not the person shall remain on conditional release.

This bill provides that DMH shall provide a recommendation to the court before the court places a person in a conditional release program.

SVP Parole Provisions (and Related General Parole Rules)

Existing Law

Existing law generally provides that inmates serving a determinate term of imprisonment shall be released on parole for a period of three years. Specified sex offenders - those released after serving a determinate term of imprisonment and specified in this bill - shall be released on parole for a period of five years. Specified sex offenders - those released by the Board of Prison Terms following an indeterminate term of imprisonment and specified in this bill - shall be released on parole for a period of five years subject to an additional five-year period of parole, as specified. (Pen. Code 3000, subd. (b)(1) and (3).)

Existing law provides that a finding that a person is an SVP "shall not toll, discharge or otherwise affect that person's period of parole." (Pen. Code 3000, subd. (a)(4).)

This Bill

This bill tolls parole for any person evaluated as a possible

SVP or committed to the SVP program. Parole tolling under this bill applies during the following periods:

Evaluation of the person by experts and through the probable

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cause hearing;
During the commitment trial process following a finding or probable cause; and
During commitment to the SPV program.

This bill provides that the period of parole includes the period of conditional release in the community under supervision.

CHILD PORNOGRAPHY AND RELATED STATUTES (Secs. 21-34)

Existing Law

Existing law provides that any person who "hires, employs, or uses" a minor to assist in committing any of the acts described in Penal Code Section 311.2 (see next paragraph) is guilty of a misdemeanor. If the person has a prior conviction, he or she is guilty of a misdemeanor, but the court may impose a fine of up to $50,000, and may sentence the defendant pursuant to Penal Code Section 311.9, which allows felony punishment for repeated convictions of child pornography related crimes. (Pen. Code 311.4, subd. (a).)

Existing law , as set out in four subdivisions in Penal Code Section 311.2, defines various crimes related to the distribution or sale of obscene matter and matter involving minors engaged in sexual conduct:

Possessing or importing into California any obscene matter for sale or distribution without commercial purposes: misdemeanor for first conviction, felony and increased fines for subsequent convictions.

Possessing, importing, etc., for commercial sale or distribution any obscene matter that includes depictions (whether obscene or not) of minors engaging in actual or simulated sexual conduct: felony, with 2, 3, or 6 year terms and $100,000 fine.

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Possessing, importing, etc., for sale or distribution to adults, without commercial purpose, any matter that depicts minors engaged in actual or simulated sexual conduct: misdemeanor, and apparently a felony for second conviction, pursuant to Section 311.9.

Possessing of importing, etc., for distribution to minors any matter that depicts minors engaged in actual or simulated sexual conduct: felony, with penalty 16 months, 2 years or 3 years in prison. Commercial consideration is not required.

Existing law provides that any person who hires or uses a minor to model or pose, or uses a minor to assist in modeling or posing that involves depictions of minors engaged in sexual activity for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code 311.4, subd. (b).)

Existing law provides that any person who hires or uses a minor to model or pose, or uses a minor to assist in modeling or posing that involves depictions of minors engaged in sexual

activity for other than commercial purposes, is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 years or 3 years. (Pen. Code 311.4, subd. (c).)

Existing law provides that with regard to any obscene matter depicting a person under the age of 18 engaged in actual or simulated "sexual conduct," any person who sends, imports, produces or duplicates such material, with the intent to distribute the material, or who offers to do so, is guilty of an alternate felony-misdemeanor, punishable by up to 1 year in county jail, a fine up to $1000, or both, or imprisonment in state prison for 16 months, 2 years, or 3 years, and a fine of up to $10,000. Exceptions apply to law enforcement investigations, legitimate scientific/educational activities, or the lawful acts of married minors. (Pen. Code 311.1.)

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Existing law provides that a person who violates Section 311.5 (promotional material involving obscenity) or Section 311.2 (distribution or sale of obscene material or child pornography), except subdivision (b) of Section 311.2 (commercial distribution of obscene matter depicting minors), is a misdemeanor punishable by a fine of not more than $1000 plus $5 for each additional unit of prohibited material, not to exceed $10,000, or by imprisonment in the county jail for not more than six months plus one day for each additional unit of prohibited material, not to exceed 360 days in the county jail, or by both such fine and imprisonment. If such person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of Section 311.2 or 311.5, except subdivision (b) of Section 311.2, is punishable as a felony. (Pen. Code 311.9, subd. (a).)

Existing law provides that a person who violates Section 311.4 (use of a minor in the production or distribution of illegal pornography) is punishable by a fine of not more than $2000 or by imprisonment in the county jail for not more than one year, or both. If the person has been previously convicted of a violation of Section 311.4, he or she is guilty of a felony, punishable by imprisonment in the state prison. (Pen. Code 311.9, subd. (b).)

Existing law provides that a person who violates Section 311.7 (conditioning book, newspaper, et cetera, distribution or franchise on acceptance of obscene material) is guilty of a misdemeanor, punishable by a fine of not more than $1000 or imprisonment in the county jail for not more than 6 months, or both. For a second and subsequent offense the defendant shall be punished by a fine of not more than $2000, or by imprisonment in the county jail for not more than one year, or both. If such person has been twice convicted of a violation of crimes involving illegal sexual material, a violation of Section 311.7 is punishable as a felony. (Pen. Code 311.9, subd. (c).)

Existing law provides that Penal Code Section 311.11 (possession

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of depictions of minors engaged in actual or simulated sexual conduct) does not apply to "drawings, figurines, statutes, or any film rated by the Motion Picture Association of America [MPAA]." Such ratings include G, PG, PG-13, R and NC-17, but not XXX or the like). (Pen. Code 311.11, subd. (d).)

Existing law defines "sexual conduct," whether actual or simulated, as the following: masturbation, sexual intercourse, oral copulation, anal intercourse, bestiality, sexual sadism, lewd or lascivious penetration of the vagina or rectum by any

object, exhibition of the genital, pubic or rectal areas for purposes of sexual stimulation of the viewer, and lewdly performed excretory functions. (Pen. Code 311.4.)

Existing law provides that "an act is simulated when it gives the appearance of being sexual conduct." (Pen. Code 311.4.)

Existing law provides that any person who sends "harmful matter" (obscenity from the perspective of minors) to a minor to seduce or arouse is guilty of an alternate misdemeanor-felony, punishable by one year in county jail or 16 months, 2 or 3 years in state prison for the first offense and a felony for a second or subsequent offense. (Pen. Code 288.2.)

Existing law provides that a person who possesses or controls matter depicting a person under the age of 18 engaged in actual or simulated "sexual conduct" is guilty of a misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine not exceeding $2500, or both. The subject material need not be obscene under this section. (Pen. Code 311.11.)

Existing law , as interpreted by relevant appellate decisions, provides that Penal Code Section 311.11 "requires a real minor and also requires knowledge of minority on the part of the perpetrator." (People v. Kurey (2001) 88 Cal.App.4th 840, 847.)

Existing law provides that if a person convicted of simple

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possession of child pornography (Pen. Code 311.11, subd. (a)) has a prior conviction for possession of matter that depicts minors engaged in actual or simulated sexual conduct (Pen. Code 311.11), or a conviction for either commercial distribution of sexual material depicting minors (Pen. Code 311.2, subd. (b)), or use of a minor in making such material for commerce (Pen. Code 311.4, subd. (b)) he or she is guilty of a felony and subject to imprisonment in the state prison for 2, 4, or 6 years and a fine of up to $10,000. (Pen. Code 311.11, subd. (b).)

Existing law provides that any person who hires or uses a minor to model or pose, or uses a minor to assist in modeling or posing that involves depictions of minors engaged in sexual activity for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code 311.4, subd. (b).)

Existing law provides that any person who hires or uses a minor to model or pose, or uses a minor to assist in modeling or posing that involves depictions of minors engaged in sexual activity for other than commercial purposes, is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years. (Pen. Code 311.4, subd. (c).)

This Bill

This bill increases the penalties for hiring or using a minor to model or pose, or using a minor to assist in modeling or posing, in depictions of minors engaged in sexual activity for other than commercial purposes, from 6 months, 2 or 3 years in prison, to 2, 3 or 4 years in prison.

This bill reorganizes the obscenity and child pornography law. The bill makes the following organizational changes:

- Eliminates redundant definitions of the forms of "matter" that can be or are prohibited under the obscenity and child

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pornography law;
Specifies that child pornography - which need not be obscene - must be in a visual form;
Places the major provisions concerning possession of child pornography and distribution of such material in adjoining sections and subdivisions; and
Places the provisions concerning distribution or exchange of obscene material, and offering or intending to distribute or exchange such material, in a single section.

This bill increases the penalties for possession and for distribution or exchange of child pornography, and the penalties for offering or intending to distribute or exchange child pornography, as follows<1>:

Possession of Child Pornography (first-time convictions)

The matter depicts a child under 16 engaged in explicit sexual conduct<2>:
felony, with a penalty of 16 months, 2 years or 3 years in prison.

The matter depicts a minor who is 16 or 17 years old engaged in explicit sexual conduct:
alternate felony-misdemeanor.

<1> See Comment 11, infra, for a chart depicting these proposed sentencing changes and current law.

<2> For purposes of these provisions, "explicit sexual conduct" "means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation on bare skin, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, graphic and explicit display of the genitals or pubic or rectal area of an overtly sexual character, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals."

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The matter depicts sexual conduct<3> not explicit that depicts a minor under the age of 16:
alternate felony-misdemeanor.

The matter depicts sexual conduct not explicit that depicts a minor who is 16 or 17 years:
misdemeanor.

Possession of Child Pornography with the Intent to Distribute or Exchange, or Offering to Distribute or Exchange

The matter depicts a child under 16 engaged in explicit sexual conduct:
felony, with a penalty of 2, 3, or 4 years in prison.

The matter depicts a minor who is 16 or 17 years old engaged in explicit sexual conduct:
felony.

The matter depicts sexual conduct not explicit that depicts a minor under the age of 16:

<3> "Sexual conduct" under these provisions "means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct."

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felony.

The matter depicts sexual conduct not explicit that depicts a minor who is 16 or 17 years: alternate felony-misdemeanor.

Where the person distributing child pornography is a registered sex offender, the crime is a felony, punishable by a term of 3, 6 or 8 years in prison.

This bill provides that where a person has been previously convicted of any registerable sex crime, possession of child pornography is a felony, with a prison term of 2, 4 or 6 years.

Statute of Limitations - Child Pornography

Current law generally provides for a six year statute of limitations for pornography offense. (Penal Code 800)

This bill would extend that period to within 10 years of the date of production of the pornographic material.

Asset Forfeiture

Existing law includes various provisions for the forfeiture of profits made from illicit activity, including specified child pornography and exploitation crimes. (Health & Saf. Code 11469; Pen. Code 186.2.)

Existing law provides that the child pornography and exploitation forfeiture, as part of the scheme for criminal asset forfeiture in organized crime prosecutions, shall be done in conjunction with the criminal trial and is limited to criminal discovery rules. (Pen. Code 186.2-186.8.)

This bill provides broadly that the profits or proceeds of any production, sale, et cetera of child pornography shall be

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subject to forfeiture. The forfeiture proceedings shall be conducted under the rules of civil discovery.

RISK ASSESSMENT FOR SEX OFFENDERS (Secs. 13-19; 48; 49; 54; 55)

Current law provides that the "Department of Corrections, to the maximum extent practicable and feasible, and subject to legislative appropriation of necessary funds, shall ensure, by July 1, 2001, that all parolees under active supervision and deemed to pose a high risk to the public of committing violent sex crimes shall be placed on an intensive and specialized parole supervision caseload." (Penal Code 3005; emphasis added.)

Existing law states the legislative finding that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on probation who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety." (Penal Code 1210.7.)

Current law provides that an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive. (Penal Code 3003.)

Mandated Risk Assessment for All Adult Male Registered Sex Offenders; STATIC-99

This bill would require that, commencing on January 1, 2007, all adult males who are required to register as sex offenders shall be subject to assessment by the STATIC-99 assessment tool. This bill would provide that the STATIC-99 and its successor instruments shall be the sole actuarial risk assessment instrument used for registered sex offenders.

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This bill would provide that, commencing on January 1, 2007, the actuarial risk assessment instrument for adult males required to register as sex offenders shall be the STATIC-99.

This bill would provide that there shall be four risk assessment tier levels assignable to registered sex offenders under this instrument: low, moderate-low, moderate-high, and high.

This bill would provide that CDCR, in consultation with the Attorney General and local law enforcement, shall establish and implement a schedule for conducting, no later than January 1, 2012, STATIC-99 assessments of adult male registered sex offenders living in California who no longer are in custody, on probation, or on parole as of the effective date of this section.

This bill would require that these persons be administered a STATIC-99 assessment according to the implementation schedule during their annual registration update by persons authorized to administer the instrument. This bill would require that the schedule adopted by DOJ shall give priority to assessing those registrants with the most recent sex offense convictions.

This bill would provide that any adult male required to register as a sex offender may seek an assessment before their scheduled assessment period at his or her own cost as determined by the department.

Mandated Periodic Review and Update of Risk Assessment Instrument

This bill would require that on or before January 1, 2010, CDCR, in consultation with DMH and experts in sex offender risk assessment and the use of actuarial instruments in predicting sex offender risk, to periodically evaluate and update the STATIC-99 or its successor instrument to ensure that California's standardized actuarial assessment instrument for

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assessing sex offender risk reflects reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-validations, and is widely accepted by the courts.

Female and Juvenile Offenders - Identification of Appropriate Actuarial Risk Assessment Instruments

This bill would require, on or before January 1, 2008, CDCR, in consultation with the Department of Mental Health and experts in sex offender risk assessment and the use of actuarial instruments in predicting sex offender risk, to research actuarial risk assessment tools for female and juvenile registered sex offenders, and to make recommendations to the Governor and to the Legislature concerning the appropriate actuarial risk assessment instrument to be used to assess those populations.

Training of Persons to Perform Assessments

This bill would require, on or before January 1, 2008, CDCR, in consultation with DMH, and experts in sex offender risk assessment and the use of actuarial instruments in predicting sex offender risk, to establish a training program for probation officers, parole officers, and any other persons authorized by law to perform risk assessment. CDCR would be required under this bill to use an expert in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk to conduct periodic training.

This bill would require probation departments and regional parole officers to designate persons within their organizations to attend a yearly training and shall train others within their organizations who are designated to perform risk assessments as required or authorized by law.

This bill would require probation officers who conduct sex offender risk assessments to be trained in an approved program

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as specified, and to receive updated training no less frequently than every two years, as determined by CDCR.

Risk Assessments at Presentencing, with Results Noted in Presentencing or Probation Officer's Report

This bill would require probation officers trained in the use of STATIC-99 to perform a presentencing risk assessment of every adult male convicted of an offense that requires him to register as a sex offender.

This bill would require probation officers to assign a risk assessment tier level score to the assessment, and to include that score in a presentencing or probation officer's report.

Facts of Offense Sheet

This bill would require probation officers to compile a Facts of Offense Sheet for every adult male convicted of an offense that requires him to register as a sex offender containing the following information concerning the offender and his offense:

- name;
- all known aliases;
- CII number;
- physical description;
- criminal history, including registerable sex offenses, other offenses, and arrests that did not result in conviction for sexual or violent offenses;
- unique circumstances of the offense for which registration is required, including but not limited to, weapons used or victim pattern;
- risk assessment tier level; and
- type of victims targeted in the past.

This bill would provide that the defendant may move the court to correct the Facts of the Offense Sheet, and additionally provide that any corrections to the Facts of the Offense Sheet offered by the defendant shall be made consistent with Section 1204 of

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the Penal Code.

This bill would require the Facts of Offense Sheet to be included in the probation officer's report, and to also be forwarded to the incarcerating agency, if any.

In addition, this bill would require that a copy of the Facts of Offense Sheet be sent by the probation department to the registering law enforcement agency in the jurisdiction where the person will reside on supervised probation within three days of the person's release on probation. Probation also would be required to send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within three days of the person's sex offense conviction, and would require that it be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. This bill would provide that the Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site, and shall be accessible only to law enforcement.

This bill would provide that if the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet would be required to be sent by CDCR or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release, with comparable provisions applicable to the Department of Mental Health if the person is committed to DMH.

Assessments of Adult Males Incarcerated in Prison or Committed to DMH

Current law generally requires probation to provide CDCR with an offense report for persons committed to CDCR. (Penal Code 1203(c).)

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This bill would require that if the person is being committed to CDCR for a registerable sex offense, the probation officer shall perform a risk assessment of the person using the STATIC-99 assessment tool, as specified.

This bill would require that all adult males who have been convicted of an offense for which they are required to register as a sex offender and who are incarcerated in state prison or committed to the Department of Mental Health be subject to sex offender risk assessment as provided by this bill. This bill would require that the assessment take place at least four months, but no sooner than 10 months, prior to release from incarceration or commitment.

This bill would require CDCR to conduct risk assessments of all parolees under active supervision and deemed to be high risk, as specified.

CDCR - Assessment of Prison Inmates

This bill would require CDCR to use the STATIC-99 assessment tool to perform a risk assessment on all male inmates who are convicted of a registerable sex offense, as specified, upon commitment to the department unless they were assessed prior to commitment.

This bill further would provide that, for those inmates already in the custody of the department, the assessment shall be performed prior to being released on parole, as specified.

CDCR Inmates - Mandatory Control and Containment Programming

This bill would require that inmates who have a risk assessment of moderate-high or high risk for committing a sex offense, according to the STATIC-99, participate in sex offender control and containment programming while incarcerated and while on parole, as developed and specified by CDCR. This bill would

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require that programming be based on current, evidence-based correctional standards that is proven to reduce the risk of reoffending.

This bill would provide that notwithstanding any other provision of law, inmates who fail to participate in the programming prescribed shall not be eligible to earn any credits, as specified.

This bill additionally would provide that an inmate serving a life term may be excluded from sex offender programming until he or she receives a parole date and is within five years of that date, unless CDCR determines that the programming for that inmate is necessary for the public safety.

This bill would provide that inmates who are condemned to death or sentenced to life without the possibility of parole are ineligible to participate in sex offender programming.

Pre-Release Risk Assessment

This bill would require CDCR to conduct a pre-release risk assessment, and would require that the person administering the assessment be trained through an approved program, with updated training no less frequently than every two years as determined by CDCR, as specified.

This bill additionally would require that adult male registered sex offenders who, subsequent to their conviction for a sex offense, are convicted of a separate criminal offense resulting in incarceration or commitment, or which would require a probation officer's report, but who have not been the subject of a risk assessment, be assessed in accordance with these provisions.

Parolees and Probationers

This bill would require adult male registered sex offenders who

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are on probation or parole as of the effective date of this section be subject to a risk assessment using the STATIC-99.

This bill additionally would impose its risk assessment requirements on adult male sex offenders convicted in a jurisdiction other than California who are required to register while living in California, who are being supervised in California under an interstate compact or who are on federal or military supervision in California. This bill would assign priority to assessing those offenders who were assigned the highest risk level under the STATIC-99 in the jurisdiction where they were convicted.

Current law generally requires a probation officer to immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. (Penal Code 1203.)

This bill would require that if a person is convicted of a felony registerable sex offense, the probation officer shall administer the STATIC-99, as specified, to determine the person's risk of reoffending, and would require the results of the assessment be part of the report to the court.

Current law provides that if a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence.

This bill would provide that if the crime requires the person to register as a sex offender, the probation officer would be required to administer the STATIC-99, as specified, to determine the person's risk of reoffending.

Access to Records by Persons Authorized to Perform STATIC-99

Assessment

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This bill would provide that any person authorized and trained to perform STATIC-99 risk assessments shall be granted access to all relevant records pertaining to a registered sex offender, as specified.

This bill would require that all state and local agencies and departments that maintain records that contain information about registered sex offenders, as specified, maintain those records during the lifetime of the registered sex offender.

Specialized sex offender caseloads - Probation and Parole (Secs. 17; 47; 54)

This bill would require probation departments and the parole authority to create specialized caseloads for all sex offenders, and to develop expertise in sex offender management.

This bill would require that sex offenders assessed at high risk levels be monitored by agents responsible for reduced case loads.

This bill would require that the risk assessment tier level assigned to a registered sex offender be used to determine the level of monitoring and control on supervision.

Current law provides that persons placed on probation by a court are under the supervision of the county probation officer, who determines both the level and type of supervision consistent with the court-ordered conditions of probation.

This bill would require each county to designate certain probation officers to monitor registered sex offenders, as specified. This bill would require that these probationers report more frequently to one of those designated probation officers than any other probationer is required to report, and shall be subject to intensive scrutiny by that designated officer.

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This bill would require each probation department to "develop

control and containment programming, in conjunction with (CDCR)

for persons who are designated at a moderate-high or high level of risk based on the STATIC-99, and shall require participation in appropriate programming of those persons as a condition of probation."

Current law provides that the "Department of Corrections, to the maximum extent practicable and feasible, and subject to legislative appropriation of necessary funds, shall ensure, by July 1, 2001, that all parolees under active supervision and deemed to pose a high risk to the public of committing violent sex crimes shall be placed on an intensive and specialized parole supervision caseload." (Penal Code 3005.)

This bill would revise this provision to incorporate the use of the STATIC-99, and to require that these parolees report frequently to designated parole offices.

This bill would require CDCR to develop control and containment programming for sex offenders who have been assessed pursuant to Section 5040 and shall require participation in appropriate programming as a condition of parole.

Plea Bargaining Scrutiny - Sex Crimes that are Subject to Life Term Sentencing (Sec. 46)

Existing law provides that in presenting a plea bargain to a crime defined as a "serious felony," the prosecutor must demonstrate to the court that the plea bargain is necessary because there is insufficient evidence to prove the serious felony or that the sentence to be imposed under the plea bargain would not be substantially different had the bargain not been made. (Pen. Code 1192.7.)

This bill states the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under life-term schemes such as the

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one-strike law (Pen. Code 667.61), three strikes (Pen. Code 1170.12) and the habitual sexual offender law (Pen. Code 667.71), rather than by engaging in plea bargaining.

This bill provides that where a plea bargain is made in a case where the defendant was charged with a sex crime that would be punished by a life-term sentence, the prosecutor shall state on the record why a sentence under those provisions was not sought.

SEX CRIME SENTENCING

New Crime: 25 to Life for Sex with a Child

Under current law a single count (chargeable and punishable act) of rape is generally punishable by imprisonment in the state prison for 3, 6 or 8 years. (Penal Code 264.)

This bill would enact a new crime providing that any person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 25 years to life.

Increased Parole Period for Persons Convicted of Violent Sex Crimes

Existing law generally provides that inmates serving a determinate term of imprisonment shall be released on parole for a period of three years. Specified sex offenders (those released after serving a determinate term of imprisonment and specified in this bill) shall be released on parole for a period of five years. Specified sex offenders (those released by the Board of Prison Terms following an indeterminate term of imprisonment and specified in this bill) shall be released on parole for a period of five years subject to an additional

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five-year period of parole, as specified. (Pen. Code 3000, subd. (b)(1) and (3).)

This bill increases parole for persons convicted of violent sex crimes - sex offenses included in the list of violent crimes in Penal Code Section 667.5, subdivision (c) - to 10 years.

This bill further provides that a person released on parole for 10 years for a violent sex crime can be held on parole and in custody (for parole violations) for a total of 15 years.

One-Strike (Life-Term) Sentencing for Oral Copulation or

Sexual Penetration of a Child (Other than Rape)

Existing Law

Existing law includes the "one-strike" sex crime sentencing law that provides sentences of 15 years or 25 years to life in certain sex crimes if specified circumstances in aggravation are found to be true. (Pen. Code 667.61.)

Existing law states that the qualifying sex crimes under the "one-strike" sex law are forcible rape, forcible spousal rape, rape by a foreign object, forcible sodomy, forcible oral copulation, specified sex crimes in concert, lewd and lascivious acts with a child under the age of 14 accomplished by force or duress, and lewd and lascivious acts with a child under the age of 14 accomplished by other than force or duress where the defendant is not eligible for probation. (Pen. Code 667.61, subd. (c).)

Existing law provides that if one of the enumerated aggravating factors set out in Section 667.61, subdivision (d), is found to be present, the qualifying sex offense is punishable by a term of 25 years to life. (Pen. Code 667.61, subd. (a).)

Single Factor - 25 years to life :
Defendant was previously convicted of one of the qualifying

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sex offenses
Defendant kidnapped the victim substantially increasing the risk of harm
Defendant inflicted aggravated mayhem or torture
The crime involved residential burglary with the intent to commit a sex offense

Existing law provides if one of the enumerated aggravating factors in Section 667.61, subdivision (e) is found to be present, the qualifying sex offense is punishable by a term of 15 years to life. If the crime involves two or more of these factors, the defendant shall receive a term of 25 years to life. (Pen. Code 667.62, subds. (a)-(b).)

One Factor - 15 years to life; Two Factors - 25 years to life :

Defendant committed the offense in the course of a residential burglary
Defendant kidnapped the victim
Defendant personally used a dangerous or deadly weapon
Defendant inflicted great bodily injury
The victim was tied or bound
The crime involved more than one victim
The defendant administered a controlled substance by force, violence or fear.
(Pen. Code 667.61, subd. (e).)

Existing law provides that any person who commits a lewd or lascivious act with a child under the age of 14 years shall be imprisoned in state prison for 3, 6 or 8 years. (Pen. Code 288.)

This Bill

This bill adds two new crimes to the crimes subject to one-strike sentencing: oral copulation involving a child under the age of 10 and sexual penetration of a child under the age of 10. This bill adds corresponding aggravating one-strike factors

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applicable where the child orally copulated the adult perpetrator and where the adult sexually penetrated the child, respectively.

Additional One-Strike Crimes and One-Strike Organization

This bill defines as one-strike crime the use of credible threats of future retaliation to commit rape (including spousal rape) or oral copulation and sodomy.

This bill defines as one-strike crimes the following forms of oral copulation in concert: oral copulation in concert by force or coercion, credible threats of future retaliation and where the victim is mentally disordered, developmentally disabled or physically disabled.

This bill defines as one-strike crimes the following forms of sodomy in concert: sodomy in concert by force or coercion and by credible threats of future retaliation.

Elimination of Sentencing Credits for One-Strike Inmates

Existing law provides that a defendant sentenced to a term of imprisonment of either 15 years to life or 25 years to life under the provisions of the "one-strike" sentencing scheme shall not have his or her sentence reduced by more than 15% by good-time/work-time credits. (Penal Code 667.61, subd. (j).)

This bill eliminates conduct/work credits for inmates sentenced under the one-strike law.

This bill eliminates a provision allowing probation for a person convicted under the one-strike law if the person qualifies for probation under Penal Code Section 1203.066, which allows probation for persons convicted of lewd conduct only under

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limited circumstances.<4>

Continuous Sexual Abuse of a Child as a One-Strike Crime

Existing law provides that "continuous sexual abuse of a child" is committed where a person who has recurring access to a child engages in three or more acts of "substantial sexual conduct" or lewd conduct with a child under the age of 14 over a period of at least three months' time. It is punished by a prison term of 6, 12 or 16 years. (Pen. Code 288.5.)

This bill adds continuous sexual abuse of a child as a one-strike crime.

Aggravated Kidnapping (for Purposes of Sex Crime) - Life Terms

Existing Law

Existing law generally defines kidnapping as the taking and carrying away of another by force or fear, and punishes this crime by imprisonment in the state prison for 3, 5, or 8 years. The element of carrying away is defined as "asportation." (Pen. Code 207, subd. (a), and 208, subd. (a); People v. Martinez (1999) 20 Cal.4th 225.)

Existing law does not require asportation in kidnapping for ransom. Kidnapping for ransom can be proved by false imprisonment and ransom demands. Kidnapping for ransom is punishable by life in prison without parole where the victim dies, suffers bodily harm, or is subjected to a substantial likelihood of death, and by life with the possibility of parole

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<4> As one-strike factors are charged by the district attorney, the prosecutor can effectively control whether a defendant may be eligible for probation for a sex crime. For the most part, the prosecutor's charges control whether a defendant is eligible for probation for lewd conduct, per se.

in other circumstances. (People v. Anderson (1979) 97 Cal.App.3d 419, 425; Pen. Code 209, subd. (a).)

Existing law provides that "aggravated kidnapping" - kidnapping for robbery, rape or spousal rape, oral copulation, sexual penetration or sodomy, where the movement of the victim substantially increased the risk of harm beyond that inherent in the underlying offense - is punishable by imprisonment in the state prison for life with the possibility of parole. (People v. Martinez (2000) 20 Cal.4th 225; Pen. Code 209, subd. (b).)

Existing law , as set out in the kidnapping for robbery case of People v. Rhoden (1972) 6 Cal.3d 519, provides that aggravated kidnapping requires that the movements of the victim have been accomplished by force, rather than by fraud or the like.

Existing law provides that a person committed to prison for life cannot be granted parole for 7 years, unless a longer period of time is specified. (Pen. Code 3046.)

Existing law provides that any person who commits a lewd or lascivious act with a child under the age of 14 years shall be imprisoned in state prison for 3, 6 or 8 years. (Pen. Code 288.) Where force or duress was used the court can or must impose fully consecutive terms for each separate count. (Pen. Code 667.6, subds. (c) and (d).)

Existing law defines a lewd act with a child as:

Any touching (through clothing or on the skin) of a child (by the defendant or by the child at the instigation of the defendant);
Done for sexual gratification (of the perpetrator or the child). (People v. Martinez (1995) 11 Cal.4th 434, 452.) While lewd conduct generally involves sexually motivated touching of a child's breasts, buttocks or external sexual organs, lewd conduct may involve sexually motivated touching of any part of the body with sexual intent.

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(Ibid.)
Defined sex crimes (rape, oral copulation, etc.) may also be charged as lewd conduct. (People v. Pearson (1986) 42 Cal.3d 351.)

Existing law defines two forms of lewd conduct with a child under the age of 14: 1) Where the crime is accomplished by force, fear, duress or menace. 2) Where no force, fear, duress, etc., is used. The sentence for the crime itself is the same whether or not force or duress was used. However, numerous other consequences apply based on whether or not the crime involved force or duress. (Pen. Code 288, subds. (a)-(b).)

Existing law , as interpreted by the courts, defines or describes force, duress and menace thus:

Force : The majority of cases hold that the element of "force" is shown by force that allowed the defendant to accomplish the act without the child's consent. (People v. Neel (1993) 19 Cal.App.4th 1784.)

Duress : Direct or implied threat of force, violence, danger, hardship or retribution sufficient to allow commission of the act. The jury shall consider all of the circumstances in determining whether duress was proved, including the age of the victim and his or her relationship to the defendant. (People v. Pitmon (1985) 170 Cal.App.3d 38, 47-51.) (e.g., a

threat to send a child to bed without dinner would appear to constitute duress.)

Existing law provides that lewd conduct with a child of 14 or 15 years of age (regardless of whether or not force or fear was used), where the defendant was more than 10 years older than the victim, is an alternate felony-misdemeanor punishable by

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imprisonment in the county jail for up to 1 year or in state prison for "one, two or three years." (Pen. Code 288, subd. (c).
(Note: The standard triad for a felony is 16 months, 2 years or 3 years.)

Existing law provides that a caretaker of a dependent adult who commits a lewd act with the dependent person by means of force or duress is guilty of a felony punishable by 3, 6 or 8 years in prison. Where force or duress is not used, the perpetrator is guilty of an alternate felony-misdemeanor punishable by imprisonment in the county jail for up to 1 year or in state prison for "one, two or three years." (Pen. Code 288, subds. (b)(2) and (c)(2).)

Existing law provides that a person who commits rape, spousal rape or sexual penetration (other than rape) in concert (by two or more perpetrators) shall be punished by imprisonment for 5, 7, or 9 years. It appears that a person who commits a sex crime in concert is necessarily guilty of the underlying crime.

This Bill

This bill adds undefined lewd conduct (288) and rape or sexual penetration in concert (264.1) to the target crimes of aggravated kidnapping.

Assault with Intent to Commit a Sex Crime or Mayhem during a Residential Burglary (Sec. 5)

Existing law provides that "any person who assaults another with the intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1 [rape or sexual penetration in concert with others], 288 [lewd conduct with a child or dependent adult] or 289 [sexual penetration]" is guilty of a felony, punishable by imprisonment for 2, 4 or 6 years. (Pen. Code 220.) Assault with intent to commit a sex

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crime has been described as an aggravated form of an attempt to commit a sex crime - the aggravation being the assault, which is defined as the intent to commit a violent injury.

This bill provides that a person who, during the commission of a residential burglary, commits assault with intent to commit specified sex crimes (rape or sexual penetration in concert, rape, sodomy, oral copulation, lewd conduct and sexual penetration) is guilty of a felony and shall be punished by imprisonment for life with the possibility of parole, regardless of whether or not the defendant intended to commit a sex crime when he entered the residence.

Aggravated Sexual Assault of a Child (Sec. 6)

Existing law (Pen. Code 269) provides that where the defendant commits a specified sex crime by force or coercion against a victim who is under 14 years of age, and where the defendant is more than 10 years older than the victim, is guilty of

aggravated sexual assault of a child and shall be imprisoned for a term of 15 years to life. The crimes included in aggravated sexual assault of a child are: specified sex crimes in concert (two or more perpetrators), sodomy, oral copulation, sexual penetration.

This bill reduces the age difference between the perpetrator and the victim in this crime from 10 to 7 years.

This bill includes an aggravated sexual assault of a child the specified sex crimes when committed by credible threats to retaliate in the future against the victim or another person.

This bill requires consecutive sentencing for each count of conviction if the crimes involved separate victims or the same victim on separate occasions.

Continuous Sexual Abuse of a Child as a One-Strike Crime and Elimination of Specified Multiple Punishment

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Restrictions in Continuous Sexual Abuse Cases (Sec. 8)

Existing law provides that "continuous sexual abuse of a child" is committed where a person who has recurring access to a child engages in three or more acts of "substantial sexual conduct" or lewd conduct with a child under the age of 14 over a period of at least three months' time. It is punished by a prison term of 6, 12 or 16 years. (Pen. Code 288.5.)

This bill adds continuous sexual abuse of a child as a one-strike crime.

Existing law provides that a defendant who is charged with continuous sexual abuse of a child cannot be charged with any "other felony sex offense" against the same victim that occurred during the period of times that the continuous sexual abuse occurred.

This bill provides that a defendant who commits sex crimes other than the conduct that constitutes continuous sexual abuse of a child (three acts of substantial sexual conduct or three acts of lewd conduct over at least three months' time), the defendant can be separately prosecuted and punished for the other sex crimes. This change responds to appellate decisions barring prosecution for any sex crimes, other than the continuous sexual abuse of the child, that occurred within the time period when the continuous abuse occurred.<5>

Habitual Sexual Offender Law (Sec. 43)

Existing law (the habitual sexual offender law) provides that a

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<5> For example, if the defendant is charged with continuous sexual abuse involving three acts of touching of the child's genitals, and the defendant also committed forced sodomy during that time period, under the current language the defendant could not be punished for sodomy. This bill eliminates that limitation.

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person previously convicted of specified sex crimes or convicted of kidnapping of a child for lewd conduct who is convicted in the current case of one of those offenses shall be sentenced to a term of 25 years to life on each count of conviction. (Pen. Code 667.71)<6> The prior qualifying crimes are:

Rape/spousal rape by force, duress, etc. (Pen. Code 261,

subd. (a)(1), 262, subd. (a)(1))
Rape or sexual penetration in concert (Pen. Code 264.1)
Lewd conduct with a child under 14 (Pen. Code 288, subds. (a)-(b)
Sexual penetration (Pen. Code 289, subd. (a))
Continuous sexual abuse (Pen. Code 288.5)
Sodomy by force or duress, etc. (Pen Code 286)
Sodomy in concert (Pen. Code 286, subd. (d))
Oral copulation by force, duress, etc. (Pen. Code 288a, subds. (c)-(d))
Kidnapping a child under 14 for lewd conduct by seduction, misrepresentation, etc.
(Pen. Code 207, subd. (b))
Kidnapping for sex crimes (former Pen. Code 208, subd. (d))
Aggravated kidnapping for purposes of specified sex crimes (Pen. Code 209)
Aggravated sexual abuse of a child (Pen. Code 269)
Conviction in other jurisdiction with elements of an offense described above.

Existing law , as set out in relevant decisional law, provides that the life term imposed under the habitual sexual offender law shall be imposed in conjunction with a Three Strikes sentence or the one-strike law, although not a combination of

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<6> The prior crimes subjecting a person to habitual sexual offender penalties constitute prior "strikes" for purposes of the Three Strikes law. The interaction of the two laws, as well as the one-strike law, can produce sentences of well over 100 years. (People v. Murphy (2001) 25 Cal.4th 136 - 160 years to life for two counts of non-forced lewd conduct where defendant had two prior similar convictions.)

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all three. (People v. Murphy, supra, 25 Cal.4th at pp. 140-141; People v. Snow (2003) 105 Cal.App.4th 271, 281-283.)

Existing law prohibits or severely restricts probation for persons convicted of sex crimes. Generally, persons convicted of sex crimes by force, fear or duress cannot receive probation. In numerous cases where probation may be granted (e.g. rape, sodomy or oral copulation by using the authority of public office to arrest or deport another, or assault with intent to commit a sex crime), the court must state on the record the unusual circumstances justifying probation. (Pen. Code 1203.065.)

Existing law requires a court to fully evaluate a defendant's application for probation, including holding a hearing to determine if the defendant poses a threat to the victim, in specified sex crime convictions where probation may be granted. (Pen. Code 1203.067.)

This bill prohibits a court from granting a defendant probation or exercising its discretion to dismiss a prior conviction allegation in an habitual sexual offender case.

This bill provides that habitual sexual offender allegations shall be set out in the "accusatory pleading," rather than the "information," as provided in existing law.

This bill expands the oral copulation convictions subject to the habitual sexual offender law by eliminating the requirement that in specified forms of the crime that the crime be accomplished by force, duress or fear of immediate bodily injury. The affected forms of the crime include 1) oral copulation where the victim is under 14 years of age and the perpetrator is more than 10 years older than the victim (Pen. Code 288a(c)(1)); 2) oral copulation through credible threats of future retaliation (Pen. Code 288a(c)(3); and 3) or oral copulation in concert (multiple perpetrators) through

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threats of future retaliation or where the victim of the crime cannot give consent because of a disability or mental disorder, or oral copulation.

This bill expands the sodomy convictions subject to the habitual sexual offender law by eliminating the requirement that in specified forms of the crime that the crime be accomplished by force, duress or fear of immediate bodily injury. The affected forms of the crime include 1) sodomy where the victim is under 14 years of age and the perpetrator is more than 10 years older than the victim (Pen. Code 288a(c)(1)); 2) sodomy through credible threats of future retaliation (Pen. Code 288a(c)(3); and 3) or oral copulation in concert (multiple perpetrators) through threats of future retaliation.

This bill adds sexual penetration (other than rape) where the victim is under 14 years of age and the perpetrator is more than 10 years older than the victim (Pen. Code 289, subd. (j)) to the habitual sexual offender law. (Under existing law where a defendant has been convicted of this form of sexual penetration and the victim is under the age of 10 the prosecution can seek a sentence of 25 years to life for a first conviction. Where the victim is over the age of 10, the court shall impose a term of 25 years to life for a second conviction.) (Pen. Code 289, subd. (j)(2).)

This bill eliminates sentencing credits that under existing law can reduce a defendant's minimum term by up to 15%.

This bill makes technical changes to various statutory references.

Violent Felony List - Limits on Prison Sentencing Credits, Definition of Prior Strikes and Other Consequences (Sec. 39)

Existing law defines specified crimes as "violent felonies,"

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from which designation numerous consequences flow, including that violent crimes (in addition to "serious felonies") constitute prior "strikes" for purposes of the Three Strikes law and that an inmate serving a sentence for a violent felony can earn no more than 15% sentencing credits to reduce his or her sentence.<7> (Pen. Code 667.5, subd. (c).)

Existing law includes a largely anachronistic provision requiring a three-year enhancement for each prior violent felony conviction where a defendant is convicted in the current case of a violent crime. This enhancement has been effectively superseded by the Three Strikes law, which imposes much higher prison terms for defendants convicted of violent offenses.

Existing law includes as violent felonies, in addition to very numerous other offenses, violent felony and sodomy accomplished by force or coercion.

This bill expands the violent felony list to include sodomy, or oral copulation or sexual penetration (other than rape) in which the victim is under that age of 14 and the perpetrator is more than 10 years older than the victim.

This bill expands the violent felony list to specifically include in-concert sodomy or oral copulation accomplished by force or coercion (although any form of forced or coerced sodomy or oral copulation is included in the existing violent felony list), or in-concert sodomy or oral copulation by a credible threat to retaliate.

This bill includes as a violent felony any sodomy or oral copulation or sexual penetration (other than rape) accomplished through a credible threat to retaliate against the victim or another person in the future.

This bill includes as a violent felony oral copulation in

<7> Defendants serving a life term (third strike) Three Strikes sentence can earn no sentencing credits.

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concert where the victim is mentally disordered, developmentally disabled or physically disabled.

This bill makes a technical change to the reference to lewd or lascivious conduct with a child (Pen. Code 288.)

This bill makes a technical change to the reference in the violent felony list to sex crimes in concert.

Enhancement for Administering Controlled Substance in the Commission of a Felony - Greater Punishment in Sex Crimes (Sec. 56)

Existing law provides that where the perpetrator of a felony administers a controlled substance by force or threat of immediate injury, the defendant's prison sentence shall be enhanced by three years. (Penal Code 12022.75.)

This bill provides that where the defendant administers a controlled substance with intent to commit a specified sex offense, the defendant shall receive a sentence enhancement of five years. To establish this enhancement, the prosecution need not show that force or threat was used in the administration of the controlled substance.

Penal Code Section 667.6 - Special Consecutive Sentencing Provisions in Sex Crimes; and (Largely Superseded) 5-Year or 10-Year Sentencing Enhancements (Secs. 40; 41; 50; 51)

Existing law provides that the court can or must impose fully consecutive terms for each count of conviction (separate sex crime) in a sex crimes prosecution involving specified offenses. (Pen. Code 667.6, subds. (c) and (d).) Where the crime involved multiple victims or where the crimes were committed on separate occasions, the court must impose consecutive terms. Crimes occurred on separate occasions where the defendant had an opportunity to reflect between two crimes.

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Existing law provides that where a defendant is convicted of a specified sex offense and has been previously convicted of such an offense, the defendant shall receive a sentence enhancement of five years. Where the defendant has been previously convicted of two or more such offense, the sentence enhancement shall be 10 years. (Penal Code 667.51.)

This bill adds various forms of sex crimes, such as commission of sodomy, oral copulation or sexual penetration other than rape by threats to retaliate in the future, to consecutive sentencing provisions of Section 667.6, subdivisions (c) and (d).

Existing law prohibits probation where the defendant is convicted of specified crimes - murder, robbery, kidnapping, residential burglary, torture, rape, assault to commit a sex crime and others - in which the defendant used a firearm. Further, where the defendant was previously convicted of such a crime, and was convicted in the current case of a crime in which the defendant used a firearm, probation is prohibited. (Pen. Code 1203.06.) Section 1203.06 also prohibits probation for a person convicted of aggravated arson.

This bill adds numerous sex crimes - sodomy, oral copulation, sexual penetration (other than rape), aggravated sexual

assault of a child - to the firearm-use probation prohibition in Section 1203.06.

This bill prohibits the court from relying on Section 1385 so as to dismiss an allegation that would bring the defendant within the probation bar in Section 1203.06, the provision barring probation for the use of a firearm during the commission of specified felonies. (Penal Code Section 1385 authorizes a court to dismiss any action, or any portion thereof, in the interests of justice, unless the Legislature has clearly prohibited the court from exercising such discretion.)

This bill strikes a provision that does not prohibit adjournment

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of criminal proceedings pursuant to Welfare and Institutions Code sections concerning commitments to state mental hospitals. (It appears that the provision in existing Section 1203.06 applied to the former Mentally Disordered Sexual Offenders' law, under which persons were committed for mental health treatment rather than being sent to prison.)

Existing law prohibits probation for defendants convicted of specified sex crimes committed by force or coercion. (Pen. Code 1203.065, subd. (a).) Section 1203.065 also prohibits probation in specified pimping and pandering offenses.

This bill adds specified sex crimes committed through credible threats of future retaliation (rape, sodomy, oral copulation or sexual penetration other than rape) and specified crimes committed in concert (sodomy or oral copulation) to the probation prohibitions of Section 1203.065.

This bill adds aggravated sexual assault of a child to the probation prohibition provisions in Section 1203.065.

Probation Prohibitions (Secs. 50; 52)

Existing law prohibits probation where the defendant is convicted of specified crimes - murder, robbery, kidnapping, residential burglary, torture, rape, assault to commit a sex crime and others - in which the defendant used a firearm. Further, where the defendant was previously convicted of such a crime, and was convicted in the current case of a crime in which the defendant used a firearm, probation is prohibited. (Pen. Code 1203.06.) Section 1203.06 also prohibits probation for a person convicted of aggravated arson.

This bill adds numerous sex crimes - sodomy, oral copulation, sexual penetration (other than rape), aggravated sexual assault of a child - to the firearm-use probation prohibition in Section 1203.06.

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This bill prohibits the court from relying on Section 1385 so as to dismiss an allegation that would bring the defendant within the probation bar in Section 1203.06, the provision barring probation for the use of a firearm during the commission of specified felonies.<8>

This bill strikes a provision that does not prohibit adjournment of criminal proceedings pursuant to Welfare and Institutions Code sections concerning commitments to state mental hospitals.<9>

Existing law prohibits probation for defendants convicted of specified sex crimes committed by force or coercion. (Pen. Code

1203.065, subd. (a).) Section 1203.065 also prohibits probation in specified pimping and pandering offenses.

This bill adds specified sex crimes committed through credible threats of future retaliation (rape, sodomy, oral copulation or sexual penetration other than rape) and specified crimes committed in concert (sodomy or oral copulation) to the probation prohibitions of Section 1203.065.)

This bill adds aggravated sexual assault of a child to the probation prohibition provisions in Section 1203.065.

Existing law prohibits probation for persons convicted of specified crimes in which the defendant, intending to inflict great bodily injury, did in fact inflict such injury.

This bill adds commission of a lewd act with a child under the

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<8> Penal Code Section 1385 authorizes a court to dismiss any action, or any portion thereof, in the interests of justice, unless the Legislature has clearly prohibited the court from exercising such discretion.

<9> It appears that the provision in existing Section 1203.06 applied to the former Mentally Disordered Sexual Offenders' law, under which persons were committed for mental health treatment rather than being sent to prison.

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age of 14, lewd acts with a person who is 14 or 15 years of age, or lewd acts with a dependent adult to the probation prohibition provisions in Section 1203.075.

This bill adds continuous sexual abuse of a child to the probation prohibition provisions in Section 1203.075.

This bill makes additional related and technical changes to Section 1203.075.

Qualifying Prior Convictions under the Three Strikes Law (Secs. 37 and 45)

Existing law provides that a criminal defendant who is convicted of any felony, and who has been convicted of two or more "serious" (Pen. Code 1192.7, subd. (c)) or "violent" (Pen. Code 667.5, subd. (c)) felonies shall be imprisoned for a term of at least 25 years to life. Where the defendant has a single prior serious or violent felony conviction, the defendant's term in the current case is doubled.

Existing law provides that qualifying prior serious and violent convictions (prior strikes) are those crimes so defined as of March 2000 - the date of the enactment of Proposition 21 of the March, 2000 Primary Election. (Pen. Code 667, subds. (b)-(i), 667.1, 11170.12 and 1170.125.)

This bill defines qualifying prior strikes as those offenses defined as serious or violent as of the effective date of this bill.

Prohibition on Traditional Judicial Discretion to Dismiss an Action or any Part Thereof in this Bill

Existing law grants trial courts, as an inherent judicial function, the authority to dismiss a criminal action or any part thereof in the interests of justice. (Pen. Code 1385.)

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Existing decisional law provides that court discretion under

Section 1385 can only be prohibited or limited by clear and explicit legislative or initiative language. (People v. Superior Court (1996) 13 Cal.4th 497.) In Romero, the Supreme Court held that the Three Strikes law did not clearly prohibit judicial discretion to dismiss a prior qualifying conviction.)

Existing law does include statutes, such as the 10-20-life firearm enhancements - that clearly and explicitly prohibit Section 1385 discretion.

This bill prohibits a court from exercising discretion under Section 1385 where the defendant is convicted under the habitual sexual offender law and explicitly prohibits the exercise of discretion under Section 1385 in other circumstances where discretion is currently limited or barred, such as the one-strike law and the ban on probation where the defendant used a gun.

SEX OFFENDER REGISTRATION (Sec. 11)

Current law generally requires people who have been convicted of specified sex offenses to register at least annually with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, for the rest of his or her life while residing in California, or while attending school or working in California, as specified. (Penal Code 290.)

This bill would require the registering agency to give the registrant a copy of the completed Department of Justice form

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each time the person registers or reregisters, including at the annual update.

This bill would require that on or before January 1, 2010, the Department of Justice shall renovate the VCIN to do the following:

(1)Correct all software deficiencies affecting data integrity and include designated data fields for all mandated sex offender data.
(2)Consolidate and simplify program logic, thereby increasing system performance and reducing system maintenance costs.
(3)Provide all necessary data storage, processing, and search capabilities.
(4)Provide law enforcement agencies with full Internet access to all sex offender data and photos.
(5)Incorporate a flexible design structure to readily meet future demands for enhanced system functionality, including public Internet access to sex offender information pursuant to Section 290.46.

MEGAN'S LAW

Under current law, the Department of Justice ("DOJ") is required to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Penal Code 290.46.) DOJ is required to include on this Web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, any other information that the Department of Justice deems relevant unless expressly excluded under the statute. (Id.)

This bill would require the Web site to display the risk assessment tier level for each posted registrant who has been assessed by the STATIC-99.

This bill would provide that if no risk assessment has been

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done, the Web site shall state, "Risk Level-Not Yet Assessed."

This bill would require specified entities which perform risk assessments to provide DOJ with risk assessment information about registrants, as specified.

This bill would require that the Web site display the date of conviction and the date of release from incarceration or commitment for each posted registrant. This bill additionally would require that the Web site also post, in a separate section from those listing current registered sex offenders, the names and reported state of destination, if any, of former registrants who have been deported or moved out of state.

This bill would require that the Web site display any prior adjudication as a sexually violent predator.

This bill adds crimes to the Internet Web site requirements which would be enacted by this bill, as specified.

Current law provides a mechanism for certain registered sex offenders to apply to DOJ to be excluded from the Megan's Law Web site. This potential exclusion includes Section 647.6 (child annoyance,) provided the offense is a misdemeanor.

This bill would revise the misdemeanor child annoyance provision to apply only if the person has a risk assessment level of low or moderate-low.

This bill additionally would require DOJ to periodically review the list of persons excluded and, if DOJ determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department would be required to rescind the exclusion, make a reasonable effort to provide notification to the person, and, no sooner than 30 days after notification is attempted, make information about the

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offender available to the public on the Internet Web site.

This bill would require the Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, to develop strategies to assist members of the public in understanding and using publicly-available information about registered sex offenders to further public safety, as specified.

Preservation of Court Records Concerning Registered Sex Offenders (Secs. 3 and 58)

Current law generally authorizes trial court clerks to destroy court records after certain periods of time depending upon the nature of the record, as specified. (Government Code 68152.) Criminal records must be retained a specified period depending upon the nature of the conviction. (Government Code 68152(e); (f).)

This bill would require that records relating to a person required to register with law enforcement as a sex offender, as specified, be retained for the life of the person.

This bill would enact a new law providing that a state or local law enforcement agency shall not destroy any records relating to a person who is required to register as a sex offender for as long as the person is living.

FINES; APPLIED TO SAFE TEAMS (Sec. 19)

Existing law provides that every person convicted of any of a list of specified sex offenses which require lifetime registration shall, in addition to any imprisonment, fine, or

both, be punished by an additional fine of $200 upon a first conviction, and $300 upon a subsequent conviction, as specified, including a finding of ability to pay by the courts; that money shall be deposited and used by counties with a DNA testing laboratory for that lab; a percentage of money from those fines for second or subsequent convictions shall be transferred and

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used by the Department of Justice for the Sexual Habitual Offender program - monitoring, apprehending, and prosecuting; and a percentage from all of the fines shall be transferred and used by the Department of Justice for DNA testing for law enforcement purposes; and those funds shall be used for other purposes, as specified. (Penal Code 290.3.)

This bill increases the existing fines to be imposed on those sex offenders from $200 to $300 for a first offense and from $300 to $500 for a second offense with an amount equal to $100 for every fine imposed in excess of $100 to be transferred to CDCR to fund SAFE Teams, as specified.

Title; Legislative Findings and Declarations

This bill would enact the "Sex Offender Punishment, Control, and Containment Act of 2006," and makes specified legislative findings and declarations concerning sex offenders.

COMMENTS

1. Stated Need for This Bill

The author states:

> The purpose of the bill is to provide a comprehensive, proactive approach to preventing the victimization of Californians by sex offenders. Under current law, California's tactical methods and infrastructure are insufficient for law enforcement to appropriately assess, convict and monitor sex offenders.
>
> SB 1128 is the product of months of discussion with, and input from, experts in the area. It incorporates a broad spectrum of approaches recognized by law enforcement and avoids key flaws

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> that have marred other bills on this subject, such as residency requirements that dump offenders into rural communities or provisions that inadvertently tie the hands of police in performing Internet sting operations.
>
> SB 1128, the Sex Offender Punishment, Control and Containment Act of 2006: Increases the prison term for child rape to 25 years to life; Expands the Megan's Law database; Toughens penalties for child pornography; Toughens penalties for Internet predators; Ensures police can use on-line decoys to catch Internet predators; Discourages prosecutors from offering plea bargains in sex offense cases; Gives state and local officials a new system to monitor dangerous parolees; Increases parole time for violent sexual offenses; Keeps sex offenders away from schools, parks, and other places where vulnerable populations, including the elderly and disabled,

congregate.

By taking this comprehensive approach SB 1128 will make all of California's communities safer from all sexual predators, not just some.

2. What This Bill Does

This is a wide-ranging measure which amends or enacts numerous statutory provisions concerning sex crimes pertaining to penalties, offender risk assessments, prevention, supervision and civil commitment. Broadly, the bill contains provisions in the following areas:

- Child luring;
- Sex offender loitering around school grounds and other places;
- Child pornography;

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- Child safety programs;
- SAFE teams;
- Recidivism risk assessments for registered sex offenders;
- Enhanced parole and probation provisions for sex offenders;
- Extended parole periods for all violent sex offenses;
- Prosecution of sex offenses and plea bargains;
- Sexually violent predators;
- Sentencing provisions for sex offenses;
- Updated Megan's Law database and increased information on the Megan's Law Web site; and
- Sex offender registration.

As set forth in detail above and discussed below, this bill contains many of the largely technical sentencing provisions contained in SB 588 (Runner), heard by the Committee earlier this year. This bill differs from the Runner bill (and the Runner initiative recently submitted to the Secretary of State for signature verification) in the following major ways:

- This bill does not contain the 2000 foot school and park residency ban on registered sex offenders contained in SB 588;
- This bill proposes a child luring crime which, unlike SB 588, includes within its scope police stings where non-minors are used;
- This bill proposes indeterminate sentencing for sexually violent predators who have been civilly committed with minimum constitutional guarantees not included in SB 588;
- This bill closes the parole tolling loophole that currently exists in the SVP law in a manner more comprehensive than SB 588;
- This bill proposes wide-ranging reforms to several child pornography statutes, including a sentencing scheme for child pornography broader and with greater sentence increases than those proposed by SB 588; and
- This bill does not propose GPS for all felony registered

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sex offenders, as does SB 588.

This bill additionally contains provisions not previously considered by the Legislature, such as a statewide system for performing recidivism risk assessments on all registered sex offenders.

3. The Sexually Violent Predator ("SVP") Law: Reflections and

Lessons from the Washington State SVP Program

History - Washington State had the First SVP Law in the Country

Washington State enacted the first sexually violent predator law in the country in 1990. As a general rule, these laws allow civil confinement for treatment of a mental disorder for a person who was first punished for a sex crime.

Over the last 70 years, however, many states have implemented laws to commit sex crime perpetrators to mental hospitals instead of prisons. California's law - the Mentally Disordered Sex Offender (MDSO) law - has been repealed, but some persons are still being held in civil confinement for successive, determinate two-year terms. Washington has had a similar law.

Arguably, California and Washington State have a similar mix of rural and urban areas. California and Washington are both in the Federal 9th Circuit. Thus, the same federal appellate courts hear SVP cases from both states. Important federal rulings on the Washington law may be instructive to California lawmakers.

California SVP Law was Drawn in Significant Part from Washington's Law - Washington has No Determinately Committed Dangerous, Mentally Disordered Offenders

Because Washington has had an SVP law longer than any other state, we can perhaps learn from the Washington experience.

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Further, much of the California law was drawn from the Washington law and adapted to practices in this state. For example, Washington unlike California, does not have a mentally disordered offender law. Mentally disordered prison inmates who may be violently dangerous are subject to closer monitoring in the community than other parolees. However, parolees who may be in need of inpatient mental health treatment are not committed to a state program, while such parolees in California are committed to a state program while on parole. Dangerous mentally disordered California parolees can be held in civil confinement in one-year increments after parole. In Washington, dangerous parolees who need inpatient care are referred to county authorities for standard civil commitment. The equivalent program in California is the LPS commitment process. Because Washington does not have an MDO program where parolees are committed under determinate terms, Washington does not have the same equal protection concerns (the requirement that similarly situated persons be treated in an equivalent manner under the law) arising from indeterminate SVP commitments.

Washington has Time Limits (Extended with Good Cause) for Bringing SVP Cases to Trial

Washington State, unlike California, requires that an SVP trial be held within 45 days of the finding of probable cause that a person may be an SVP. The trial can be continued at the request of either side upon a showing of good cause. There are no time limits on bringing SVP cases to trial in California.

SHOULD CALIFORNIA, AS DOES WASHINGTON STATE, REQUIRE AN SVP TRIAL TO BE HELD WITHIN A CERTAIN AMOUNT OF TIME AFTER A FINDING OF PROBABLE CAUSE THAT A PERSON IS AN SVP?

The Washington Attorney General Handles Virtually All SVP Cases, while Local District Attorneys Handle SVP Cases in California

In Washington, the Attorney General prosecutes SVP cases in 38

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of the 39 counties. SVP cases can thereby be coordinated and streamlined. The Washington SVP prosecutors know the experts and issues in this field very well. Attorneys in the office report that they use discretion in the filing of cases so as to avoid wasting resources.

In California, each county district attorney handles SVP cases arising from that county. Different policies and standards can be followed in each county. Prosecutors and defense attorneys in Los Angeles can develop deep experience and skill in SVP cases, while those in smaller counties may have little experience or skill in these matters. Because of the constitutional right to a speedy trial in criminal cases, district attorneys are very likely to place a priority on felony trials over SVP cases. SVP cases are often delayed for years, producing absurd results. (An SVP defendant facing a recommitment trial for the period from, say, 2004-2006, may not have the case heard until 2007.)

SHOULD PROSECUTION OF SVP CASES BE HANDLED BY A SINGLE STATE OFFICE (SUCH AS THE ATTORNEY GENERAL), TO DEVELOP AND MAINTAIN COORDINATION, EXPERTISE AND CONSISTENCY IN SVP CASES, AS HAS BEEN THE CASE IN WASHINGTON?

Washington Treatment and Conditional Release (Less Restrictive Alternative) Programs - Federal Court Contempt Fines and Resulting Compliance with Federal Orders; State Operated Conditional Release Facilities

Washington State has conditionally released (released to a "less restrictive alternative" or LRA) 13 people. These persons have been released to family members or have been placed in special facilities intended to integrate the SVP patient back into society. The special facilities have been problematic for Washington. Initially the only LRA facility was on McNeil Island, the home of the SVP inpatient (Special Commitment) center. Another facility will soon open in Seattle.

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The federal courts did not find that the statutory terms of the treatment program, including the LRA provisions, violated the Constitution. The federal courts did find that the program, as implemented, failed to offer adequate treatment. The program has operated under a federal court injunction for years. Approximately $14 million in contempt of court fines have accrued while the state works to provide adequate treatment, including constructing or opening transitional living facilities in the community. The state will not have to pay the fines if the court is satisfied with the progress made in improving treatment. According to the Washington SCC Web site: "The court also found that the lack of less restrictive alternative housing options was a significant issue and ordered the state to '[make] arrangements?for the community transition of qualified residents, under supervision, when they are ready for a less restrictive alternative.'"

Arguably, California should be careful to provide a genuine opportunity for SVP patients to obtain meaningful treatment and to be integrated back into the community through conditional release. Because DMH has had great difficulty finding housing for SVP patients, perhaps California should consider the use of state-run transitional facilities. Care must be taken in taking these steps, as the federal courts may be less understanding of treatment inadequacies in California after addressing treatment standards issues over the past 12 years in Washington.

SHOULD CALIFORNIA OPEN STATE-OPERATED TRANSITIONAL FACILITIES TO HOUSE CONDITIONALLY RELEASED SVP PATIENTS AND HELP INTERGRATE THEM BACK INTO SOCIETY?

Qualifying Convictions - No Washington State SVP has been Committed who had a Single Prior Offense

Numerous bills in recent years, and the proposed Jessica's Law initiative, have proposed that the SVP law be amended to allow commitment of a person who has been convicted of a single prior sex offense. Washington State allows commitment with only a

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single offense. However, officials with the Washington program and in the Attorney General's SVP prosecution office are not aware of any case in which a person was committed who had only a single prior conviction. As noted above, Washington prosecutors exercise discretion in bringing SVP trials. The persons who have been evaluated in Washington as SVPs have generally had long histories of sexual offending. It may be a waste of scarce resources to change California law so as to allow commitment of persons to the SVP program who have only a single prior conviction. If such a person has a relatively high risk of sexual offending, as measured by assessment tools, it is suggested that close monitoring in the community be done.

Similar issues can be raised about proposals to add more juvenile adjudications to the list of qualifying SVP crimes. Experts in the field have concluded that juvenile sex offenders are different from adult sex offenders. Allowing an adult SVP commitment to be based on juvenile priors would likely produce very few commitments from a large increase in the number of people screened. It must be noted that sexually dangerous persons who are committed to the Youth Authority can be kept in civil confinement under Section 1800 of the Welfare and Institutions Code now. Sexually dangerous persons who would otherwise be released from Youth Authority control are committed, similar to SVPs and MDOs, for successive two-year terms.

Newly Enacted Alternatives to SVP Commitment in Washington - All Sex Offenders Convicted of Contact Offenses are Indeterminately Sentenced, with Varying Minimum Terms

According to the Washington Attorney General's office, Washington has recently passed a law requiring indeterminate prison terms for defendants convicted of all contact sex offenses. The minimum term in prison is determined from a grid, with one axis being the seriousness of the offense and the other being the defendant's record. Sex offenders are offered

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treatment in prison. This change in law will force Washington to substantially expand its parole board system. A similar change in California could be very problematic, as parole hearings are routinely delayed for months or years in California. It appears that the California courts may soon intervene to force more expedited handling of parole hearings.

SHOULD CALIFORNIA CONSIDER MAKING ALL SEX CRIMES IN CALIFORNIA SUBJECT TO INDETERMINATE TERMS?

The indeterminate commitment provisions in this bill are drawn from the Washington law. Unlike some other proposals made in California for indeterminate commitments, the Washington law appears to comply with constitutional due process requirements by giving SVP patients a reasonably full, annual opportunity for court review of the commitment. The due process issue is discussed below.

4. Civil Commitment Schemes Based on Dangerousness and Mental Disorders - Including SVP Laws - Must Provide Due Process, Including Reasonable Access to the Courts and Court Review of Status

In 2005, the California Supreme Court considered the civil commitment scheme (Welf. & Inst. Code 1800 et seq.) for mentally disordered and dangerous persons who would otherwise be released from Youth Authority parole. In this case, In re

Howard N. (2005) 35 Cal.4th 117, the Court discussed the need for due process in civil commitment schemes generally. Commitment under Section 1800 is similar in many respects to commitment under the SVP law. Howard N. includes important discussions about the SVP Act. The court stated:

> The [United States Supreme] court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protectionNevertheless, [s]tates have in certain narrow circumstances provided for the

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> forcible civil detainment of people who are unable to control their behavior andpose a danger to [others]." The high court has "consistently upheld such involuntary commitmentprovided the confinement takes place pursuant to proper procedures and evidentiary standards."
>
> .[T]he high court has"sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as a 'mental illness' or'abnormality. [Citations.] Theserequirements serve to limit involuntary civil confinement to those who suffer from a volitional control."
>
> We employed a similar approachin Hofferber. In that case, we concluded that "the state may confine incompetent criminal defendants, on grounds that they remain violently dangerous We observed, however, that the relevant statutes did "not expressly require a showing of continuing dangerousness," but appeared "to permit indefinite maintenance of [Lanterman-Petris-Short Act] conservatorships solely because the incompetence continues and the violent felony charges have not been dismissed." Therefore, in order to preserve the constitutionality of the statutory scheme, we construed it to require current dangerousness. . (Id, at pp. 127-129, 134-135; citations omitted; bold type added, italics in original.)

The court in Howard emphasized that the state must demonstrate the current dangerousness of a civilly committed person. That requirement is met in the many California commitment statutes by recommitment trials or hearings after set period of time. (Id, at p. 131, 133-135.) It seems clear that continuing dangerousness

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must be demonstrated on some regular basis under an indeterminate commitment, even where the law does not require the entire original commitment process to be repeated as though the person had never been committed.

The ruling of the court in In re Howard N. can clearly be read as requiring access to the courts and a process for renewing commitments that provide due process. That is, a scheme where a person is indeterminately committed and under which the person cannot obtain meaningful review the commitment, or where the person cannot challenge continuing commitment through a showing of changed circumstances, would be subject to serious due process attacks.

The indeterminate scheme in this bill is modeled on the

Washington State indeterminate commitment process. Under that scheme, as under the equivalent terms of this bill, an SVP patient must be evaluated every year. The patient can file a petition for conditional or unconditional release with or without the support of the state treatment program authorities. If the state fails to present a prima facie case that the person must be confined because he remains sexually dangerous because of a mental disorder, or if the patient establishes probable cause that those conditions no longer exist, a trial must be held. At the trial, the state must prove beyond a reasonable doubt that the person must continue to be confined, or the state must prove that the person cannot be safely released in the community under supervised, conditional release.

Further, because it appears that the state has a continuing responsibility to justify commitment, unless the person waives the right to an annual non-appearance show-cause hearing the court shall review the issue of whether a prima facie case exists that continuing confinement is necessary.

It appears that the so-called Jessica's Law bills and initiative only provide that an SVP patient can obtain

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certain judicial review with the approval of the director of DMH. Should that approach be enacted, it would be subject to serious due process attack. Under the Jessica's Law commitment review scheme, a patient can file a petition without the approval of DMH. However, it appears that the patient can only seek conditional release without the approval of DMH. Further, the court can deny the patient's petition without any hearing if the court finds that the petition is frivolous. It is not clear that the court would have to make any particular finding in denying the petition without a hearing.

Legislators should be aware that in prior years, a number of urgency bills were introduced and enacted when courts found errors or problems with the SVP law. For example, the law originally did not provide for holding inmates who had not been evaluated as possible SVPs by the time they would have been released from prison on parole. Had the Legislature not acted so as to allow a 45-day hold to complete evaluations, prospective SVPs would have been released on parole and not subject to commitment. If an indeterminate scheme is enacted that does not provide due process, the entire program could be found unconstitutional. Under such circumstances, the Legislature may not be able to cure due process errors before release of SVP patients from the program.

5. The Elephant in the Room - Equal Protection Issues Arising from Indeterminate SVP Commitments when Similar Commitment Schemes (e.g., Mentally Disordered Offender Law) use Determinate Terms

This bill includes a provision that a commitment to the SVP program would be for an indeterminate period of years. Other states have indeterminate commitment terms for SVP patients. However, Washington State, which indeterminately commits SVP patients, has indeterminate terms for other forensic (initially arising from criminal matters) mental health commitments.

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California's other forensic mental health commitments are for set periods of times. Thus, an indeterminate term for California SVPs would meet a serious challenge based on equal

protection of the law, as SVPs would not be treated similarly under the law to similarly situated persons like, for example, Mentally Disordered Offenders.

California appellate courts have held that persons involuntarily committed under the SVP law are similarly situated to persons involuntarily committed as Mentally Disordered Offenders and "other persons involuntarily committed." (People v. Buffington (1999) 74 Cal.App.4th 1149, 1156.)

A recent example of this analysis involves the issue of involuntary administration of antipsychotic medication. The court in In re Calhoun (2003)) 121 Cal.App.4th 1315, 1353-1354 agreed that SVP defendants and patients are similarly situated to Mentally Disordered Offenders (MDO), who are also committed for psychiatric treatment when they would otherwise be released from prison on parole. The court in Calhoun noted that involuntary civil commitment affects or limits the fundamental interest of liberty. In particular, the court in Calhoun held that SVP patients, just as MDO patients, have the right to refuse involuntary administration of antipsychotic medication.

The court in Calhoun explained that where similarly situated persons are treated differently in regard to a fundamental interest, the state action will be reviewed with strict scrutiny:

> If a classification scheme is subject to strict scrutiny because it affects a fundamental interest, the presumption of constitutionality that would otherwise pertain falls away, the burden shifts, and the state must both establish a compelling interest that justifies the law and also demonstrate that the distinctions drawn by the law are necessary to

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> further that state interest. [Citations.]
>
> Respondent has failed to demonstrate a compelling state interest that justifies the distinction between MDOs and SVPs concerning the right to refuse antipsychotic medication. As discussed above, the distinction cannot be justified merely because, unlike an MDO, an SVP's mental disorder must make it likely that he "will engage in sexually violent [predatory] criminal behavior." [Citations.] (In re Calhoun, supra, 121 Cal.App.4th at pp. 1353-1354.)

MDO patients are generally committed for a period of one year. A person found not guilty by reason of insanity (NGI) is committed for treatment for a period no longer than the maximum time he or she could be sentenced for the underlying crime. If the NGI defendant remains a danger to others because of a mental disorder at the end of the initial commitment, he or she can be committed for an additional period of two years. This bill would require a substantially longer period of commitment for SVP patients than similarly situated civilly committed "forensic" (criminal justice) mental patients.

6. Should the Legislature Make Mentally Disordered Offender Commitments and Other Forensic Civil Commitments Indeterminate so as to Avoid or Minimize Equal Protection Problems

The previous comment discusses equal protection issues that will arise if SVP patients are committed to indeterminate terms while other forensic patients are committed to determinate terms. A "forensic commitment" is one that involves a person whose mental disorder or illness is linked to criminal behavior. For example, a mentally disordered offender was convicted of a violent crime which was caused or exacerbated by the mental disorder and who remains dangerous without treatment. As noted above,

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California courts have found that MDOs and SVPs are similarly situated and must be treated equally under the law for certain purposes.

It cannot be predicted whether or not the California or United States Supreme Court would rule that equal protection bars different forms of commitment (indeterminate vs. determinate) for SVPs than MDOs and others subject to forensic civil commitments. Equal protection litigation on this issue will be very complex, protracted and expensive.

In such litigation, the state is most likely to argue that the treatment for SVPs and MDOs and others subject to forensic civil commitment is necessarily very different. In particular, MDO patients often suffer from mental illnesses such as schizophrenia and paranoid-schizophrenia. These illnesses may be managed or controlled through the use of antipsychotic medication. Properly medicated MDO patients may keep their maladies in remission. SVPs are often diagnosed with mental disorders that cannot be managed or controlled through medication. Such an argument may be undercut by the fact that a person convicted of a violent sex offense can be committed as an MDO. Similar arguments can be made based on the civil commitments under Welfare and Institutions Code Section 1800, for dangerous and mentally disordered persons who would otherwise be released from Youth Authority control. Such persons are held for two-year commitments, just as are SVPs under existing law. Section 1800 commitments often involve persons who have committed sexual offenses.

Chaos could result if the courts hold that an indeterminate commitment for SVPs alone violates equal protection. The courts could order the release of all indeterminately committed SVPs. The courts could order such release, but grant the Legislature some time to cure the constitutional infirmity.

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Should the courts invalidate the indeterminate commitment process in this bill, none of the outcomes would be welcome. One could argue that the Legislature should move to make the similar commitment schemes for forensic civil commitments consistent.

IF THE INDETERMINATE COMMITMENT SCHEME FOR SVP PATIENTS IS ENACTED, SHOULD THE OTHER FORENSIC COMMITMENT SCHEMES BE MADE INDETERMINATE, THEREBY AVOIDING THE CHAOS THAT COULD ENSUE IF INDETERMINATE SVP COMMITMENTS ARE FOUND TO VIOLATE EQUAL PROTECTION?

Equal protection concerns beg the question of whether the Legislature should consider revising the other forensic civil commitment provisions. If the indeterminate SVP commitment provision in this bill is enacted, the SVP program would be the only forensic civil commitment program in California under which persons are indeterminately committed.

7. SVP Parole Issues; Tolling

This bill sets out a comprehensive parole tolling provision for any person subject to evaluation and commitment as an SVP. Under this bill parole is continuously tolled through the initial evaluation process, the probable cause hearing and the period of commitment to DMH for treatment. The only time that parole runs for a person who is evaluated or committed as an SVP is the time that the person is under supervised conditional release in the community.

The purpose of the parole tolling provisions in the bill is to insure that sex offenders will not be released into the community having avoided parole supervision. Under existing

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law, a person subject to evaluation and commitment as an SVP will likely not be under parole supervision when he is released into the community. Recent media reports and prior analyses published by this Committee have noted that dozens of persons have been released without parole supervision after they prevailed in an SVP trial, were released after the state dropped the case, or were not found to be SVPs by expert evaluators.

The Jessica's Law initiative and bills - AB 231 (Runner) and SB 588 (Runner) - appear to only toll parole while a person is actually in the SVP program. Such a tolling provision would not affect the cases that have drawn the greatest media scrutiny - sex offenders who were evaluated as SVPs but were not committed to the SVP program. Because SVP proceedings following a finding of probable cause typically take many years, persons who are not committed through the process generally are not on parole at the conclusion of court proceedings.

Even if a person was committed to the program, their parole period has generally run during the court process. Tolling parole during the treatment program, as would occur under the Jessica's Law provisions, would accomplish little or nothing if the period of parole has run prior to commitment. Where SVPs are released from the program unconditionally, they generally are subject to no supervision or restrictions beyond sex offender registration.

In summary, this bill would ensure that sex offenders who are either evaluated or committed as SVPs will be monitored and supervised on parole in the community.

It must be noted, however, that tolling parole for SVPs, while not tolling parole for mentally disordered offenders and other offenders committed because of mental disorders, likely will be strongly challenged on equal protection grounds. Further, because of the ban on "ex-post facto" punishment, tolling parole will likely only apply to defendants if the crime for which they are on parole was committed after the effective date of this

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bill. These constitutional issues are discussed below.

8. Data on SVP Program (through December 2005) - Only 8% of Inmates with Qualifying Prior Commitments are Committed to the SVP Program

The following chart summarizes the data concerning inmates who have passed through the SVP screening, probable cause and commitment process from the inception of the program through December 2005:

Total screened by CDCR (with qualifying prior convictions)	6,368
Eliminated after DMH individual record review	2,910
Clinical evaluation that inmate is not SVP	2,069

Clinical evaluation that inmate may be SVP	1,307
Cases rejected by DA	184
Petition for commitment filed by DA	1,073
Judge rejects (no probable cause inmate is SVP)	158
Judge finds probable cause person is SVP	846
Defendant won trial	132

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Trials pending	174
Actually committed as SVPs	539

Even under current standards, expert evaluators have only found about 1/3 of inmates with qualifying prior convictions have mental disorders that make it likely they will engage in future predatory sex acts. Through the process of petitions, probable cause hearings and trials only about 8% of inmates with prior qualifying convictions are actually committed to the SVP program. If the pool of inmates subject to evaluation is greatly expanded, with substantial attendant expense, very few additional commitments to the SVP program will result. The percentage of persons committed to the program, as a portion of the total number screened, will likely fall well below the current rate of 8%.

9. Widely Accepted Diagnostic Tool for Predicting Recidivism - STATIC-99

The "STATIC-99," which this bill proposes to employ as a tool for assessing the recidivism risk of registered sex offenders, is a widely accepted diagnostic tool for predicting recidivism by persons convicted of sex crimes. The tool was developed in Canada and is used throughout North America and around the world. The developers of STATIC-99 conduct ongoing research and evaluation of the instrument. A new version - STATIC-2002 - is being reviewed and refined at this time. The researchers particularly seek to make the instrument both more accurate in predicting risk and easier to apply in the field. It is likely that employment insecurity will be emphasized as a predictor of reoffense and that the factor concerning a lack of close relationships will be made easier to document. This latter change will likely help probation officers and parole agents obtain correct data.

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Currently in California, STATIC-99 is used by CDCR in determining which high-risk parolees should be monitored with GPS. The STATIC-99 is an important component of the DMH review of persons who face possible commitment as sexually violent predators. (The governing statute requires DMH to employ and update a standardized assessment protocol.)

The identified risk factors for recidivism identified in the STATIC-99 are, as follows:

Young offender (18-25).
Lack of intimate partners (intimate partnerships of 2 years or more lessen recidivism).
Non-sexual violence.
Prior convictions for non-sexual violence.
Prior sex offenses (very important predictor of future criminal behavior).
Prior criminal sentencing - 4 or more separate sentencings.
Convictions for "non-contact" sex offense (exhibitionism, obscene telephone calls, obscene material).
Unrelated victims - perpetrators who were not related to their victims are more likely to re-offend.
Stranger victims - perpetrators who preyed on strangers are more likely to reoffend. Male victims - perpetrators who committed crimes against male victims are more likely to reoffend.

This bill proposes a comprehensive system for ensuring that risk assessments are conducted for all persons convicted of registerable sex offenses, whether granted probation, in prison, on parole, or in the community after terms of parole or probation have ended. This system also would require that risk assessment levels be posted on Megan's Law to further inform the public as to the particular risk level of individual registrants.

10. Research Concerning Sex Crime Recidivism

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In February 2004, the Department of Public Safety and Emergency Preparedness of Canada (comparable to U.S. Dept. of Justice and Homeland Security) published an analysis of 95 separate sexual offender recidivism studies "involving more than 31,000 sexual offenders and close to 2000 recidivism predictions." The study concluded: "most sexual offenders are never reconvicted for another sexual offence. [Sic]" The study noted a number of factors strongly associated with recidivism and recommended that resources be applied accordingly.

A 2003 study by the U.S. Bureau of Justice Statistics has been widely cited as authority for assertions that sex offenders have shocking rates of recidivism. However, the study does not make such claims. In fact, as measured by the study, sex offenders have lower rates of recidivism than do other offenders. The study did make the finding that (former prison inmate) sex offenders were more likely to commit a future sex crime than were other former inmates, although the non-sex crime inmates were significantly more likely to commit new crimes overall. This is consistent with one of the basic principles underlying the STATIC-99 that past behavior is an important predictor of future behavior.

SHOULD CALIFORNIA EMPLOY EVIDENCE-BASED RESEARCH TO FOCUS ITS STRATEGIES FOR CONTAINING SEX OFFENDERS AND PREVENTING FUTURE SEX CRIMES?

ARE THERE MORE SOPHISTICATED LAW ENFORCEMENT AND CONTAINMENT TOOLS THAT CALIFORNIA SHOULD BE TAKING ADVANTAGE OF TO FOCUS RESOURCES ON THOSE SEX OFFENDERS MOST LIKELY TO COMMIT SEX CRIMES?

R. Karl Hanson, the Canadian government researcher who co-developed the STATIC-99 assessment tool, has recently published a meta-analysis of studies of the recidivism of

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rapists as compared to child molesters. The study abstract summarized the findings:

> Study examined the relationship of age to sexual recidivism using data from 10 follow-up studies of adult male sexual offenders (combined sample of 4,673).
>
> Rapists were younger than child molesters.
>
> Recidivism risk of rapists steadily decreased with age.
>
> Extrafamilial child molesters (molesters of non-relatives) showed relatively little reduction in recidivism until after the age of 50.
>
> Recidivism rate of intrafamilial child molesters was generally low (less than 10%), except recidivism rate of 18-24 year old intrafamilial offenders was comparable to that of rapists and extrafamilial child molesters.

Risk factors for sex offenders updated by Hanson in 2005 are as follows:

Deviant Sexual Interest

Most sex offenders do not have an enduring preference for illegal sexual activities. Offenders may act on these less-than-preferred sexual objects/activities (response to underage persons, forced sex) for any number of reasons including peer pressure, impulsivity, and opportunity. (Study, p. 12, citation omitted.)

Low Self-Control

"Low self-control refers to the tendency to respond impulsively to short-term temptation, have little

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consideration for future consequences, and engage in high-risk behaviours, such as drinking, driving fast, and sexual promiscuity." Some researchers describe low self-control as the critical factor in sexual offending. (Study, p. 13.)

Opportunity

"Unlike problems with self-control, which should diminish in early adulthood, and deviant sexual drives, which should diminish in early adulthood, and deviant sexual drives, which should diminish in later adulthood, the opportunities for child molesting should decrease in middle adulthood. Most child molesters exploit a relationship of trust with a known or related victim. The opportunities for rape, in contrast, should decrease with age. Most rape victims are young women known to the offender." (Study, p. 14.)

Employment Instability

Dr. Hanson's most recent research concluded that "employment instability significantly predicted sexual recidivism in the current review ?"

Dr. Hanson has recently published an updated meta-analysis of relevant studies. Hanson summarized his findings:

> The results confirmed that deviant sexual interests and antisocial orientation as important predictors of sexual recidivism. Antisocial orientation (e.g., unstable lifestyle, history of rule violation) was a particularly important predictor of violent non-sexual recidivism and general recidivism. The study also identified a number of new predictor variables, some of which have the potential of being useful targets for intervention

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(e.g., sexual preoccupations, conflicts in intimate relationships, emotional identification with children, hostility). Actuarial risk instruments were consistently more accurate than unguided clinical opinions in predicting sexual, violent non-sexual and general recidivism. (Hanson and Morton-Bourgon, Predictors of Sexual Recidivism, an Updated Meta-Analysis, 2005.)

Summary of Research and Suggestions

Many studies have shown that the recidivism rates for sexual offenders is lower than that of other kinds of criminals, even assuming a lower rate of reporting of sex crimes. In this study, Hanson noted that recidivism of sex offenders declined with age, "but the overall effect was not large " Recidivism for rapists declined with age more steeply than with child molesters. Extrafamilial child molesters show little decline in recidivism until after age 50. Hanson noted that the research on the age of onset of offending could be affected by the fact that the reporting of intrafamilial child molesting is often delayed.

Hanson concluded: "Much of the age decline in sexual offending could also be attributed to simple learning effect. With experience, man can learn that sex offending is not an effective route to happiness, or more disturbingly, they can learn new and better ways to avoid detection. Disentangling these various explanations requires, of course, further research."

SHOULD THE STRATEGIES FOR CONTAINING SEX OFFENDERS BE SHAPED BY EMPIRICAL RESEARCH, INCLUDING CONSIDERATION OF OFFENSE AND REOFFENSE RISKS?

SHOULD RESEARCH AND EVALUATION BE CONDUCTED AND ENCOURAGED, AND SHOULD OUR POLICIES BE ADJUSTED IN RESPONSE TO SUCH

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RESEARCH AND EVALUATION?

11. Child Pornography Statutes: Complications and Confusion

California obscenity and child pornography laws are very difficult to read and understand. Various sections include redundant definitions of "matter" that can constitute obscenity or child pornography. Other sections contain redundant descriptions of acts that constitute crimes. Major differences among various crime and penalty provisions depend on the addition or deletion of one word or phrase within multi-subdivision sections and among the various sections.

Some penalty provisions are arguably inconsistent. For example, a person convicted of simple possession of child pornography receives the same punishment as a person who distributes or exchanges such material with other adults, although a person who distributes or exchanges material would seem to be the more egregious offender. The punishment for specified forms of commercially motivated forms of distributing child pornography can only be determined by a very confusing application of cross references in Section 311.2 and 311.9.

This bill eliminates many of the redundancies in the obscenity and child pornography provisions. Arguably, one who reads the amended provisions will have much less difficulty applying or deciphering the law than doing so as to the current statutes.

As described in detail above, this bill also would impose a

structure of graduated penalties, with the greatest penalties imposed for possession of explicit sexual conduct depicting minors under the age of 16, as well as for material possessed with the intent to distribute. The following chart depicts some of these new penalties:

CRIME	CURRENT LAW	THIS BILL

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Simple possession of child pornography (PC 311.11)	Misdemeanor	Under 16, "explicit" sexual conduct<10>: felony (16/2/3) (new) 16 or 17, explicit sexual conduct: wobbler (new) 16 or 17, sexual conduct, but not "explicit" (311.4(d)): misdemeanor (same as current law) Under 16: sexual conduct but not "explicit" (311.4(d)): wobbler
Possession with intent	To person	Possession with

<10> For purposes of this section, "explicit sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation on bare skin, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, graphic and explicit display of the genitals or pubic or rectal area of an overtly sexual character, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals.

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to distribute or exchange (no commercial purpose required) (PC 311.2(c))	18+: misdemeanor To person under 18: felony (16/2/3)	intent to distribute or exchange to a person of any age:<11> Under 16: "explicit" sexual conduct: felony (2/3/4) (new) 16 or 17, "explicit" sexual conduct: felony (16/2/3) (new) 16 or 17, sexual conduct but not

		"explicit" (311.4(d)): wobbler (new) Under 16 sexual conduct not "explicit" (311.4(d)): felony (16/2/3) 3/6/8 felony if person is a registered sex offender (new)
Employment or use of minor for child pornography - assist in any act to distribute or exchange	Misdemeanor	Wobbler

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<11> NOTE: Penal Code 311.2 subdivisions (c) and (d) should be repealed, and these provisions added to Penal Code 311.11.

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- 1st offense (PC 311.4 (a))		
Employment or use of minor for child pornography - posing or modeling, no commercial purpose reqd (PC 311.4(c))	Felony 16/2/3	Under 16, explicit sexual conduct: felony (2/3/4)<12>

12. Contacting Minors with Intent to Commit a Sex Crime - Child Luring; Police Stings

Any bill that defines a specific crime for luring of children by adults for purposes of sex should be drafted so as to not interfere with the ability of law enforcement to conduct stings to catch men who seek to have sex with minors. Law enforcement stings - in which law enforcement officers pose as children - are relatively common and have produced many arrests and much publicity.

This bill defines a crime under which penalties increase based on the defendant's increasingly dangerous or egregious conduct. This crime uses settled and court-tested language from Penal Code Section 647.6 - annoying or molesting (without physical contact) a child - about persons with an abnormal sexual interest in children. The crime defined is committed where the defendant, with the noted abnormal interest, contacts a child or a person they think is a child with the intent to engage in sexual activity. The penalties in the crime are higher where the defendant actually goes to an arranged meeting.

The crime proposed by this bill can be committed where the perpetrator goes to the residence of the victim. As many

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<12> NOTE: The author may wish to amend Penal Code 311.2 and 311.4 to provide that prosecution under these sections shall not preclude prosecution for human trafficking.

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members know, in recent television exposes, the adults who intended to have sexual contact with children came to homes that they - the adults - thought were the residences of the children.

The Jessica's Law bills (SB 588 and AB 231) and initiative require as an element that the crime involve an actual child, not a law enforcement officer posing as a child. As such, the new section proposed by these measures could not be used to prosecute those caught in law enforcement stings.

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Further, defendants arrested in stings might be able to successfully argue that they must be prosecuted under the new luring crime proposed by SB 588/Jessica's Law rather than for attempted lewd conduct. A maxim of criminal law holds that a specific law controls over a more general law covering the same conduct. (1 Witkin & Epstein (3d Ed. 2000) Intro. to Crimes, 59-61.) A defendant who contacted a minor, or who contacted an officer posing as a minor, for purposes of sex, arguably could demand to be prosecuted under the section created by this measure - as they would be much more specific than the general attempt statute. Prosecutors could thereby lose any benefits of existing case law concerning attempts to commit lewd conduct.

13. Sex Crime Sentencing Changes in Jessica's Law Initiative and This Bill (to One Strike, Habitual Sexual Offender, et cetera Laws); Much Ado about Relatively Little - Technical Amendments and Relatively Minor Substantive Changes

As recently amended, this bill incorporates a number of the sentencing revisions proposed in SB 588 and the proposed Jessica's Law initiative. While substantive, these sentencing changes nonetheless are largely technical, and include relatively modest expansions of sex crime definitions and sentences. Other changes coordinate provisions within and among sex crime sentencing schemes.

An example of a largely technical change is the addition of sex crimes committed by credible threats to retaliate in the future to life-term sentencing schemes. That appears to be a relatively substantial change. However, these sentencing schemes generally now include crimes committed by "duress" or "menace." Because threats to retaliate in the future arguably constitute duress or menace, threats to retaliate are included implicitly in the current sentencing schemes. Still, a direct inclusion of threats to retaliate as an aggravating factor, rather than as an example of duress, may be easier to explain to jurors. That does not mean, however, that the law has been substantially expanded.

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14. New Life Term for Particularly Heinous Sexual Contact with a Young Child

This bill defines a new crime, with a prison term of 25years to life, for a person who has sexual intercourse or sodomy with a child under the age of 10. Under current law, a life term can be imposed for this conduct. However, a conviction for a crime that would produce such a sentence would require a number of steps. For example, sexual intercourse with a child under 10 could be charged as lewd conduct, a one-strike crime. Sexual intercourse with a child would very likely cause great bodily injury. Great bodily injury is an aggravating factor under the one-strike law. If the jury makes a finding in a one-strike prosecution that the defendant did cause great bodily injury, the defendant would receive a life term. This bill proposes a narrowly drafted crime that would not involve the elements currently required under current law.

15. Megan's Law

This bill proposes to require the Department of Justice to renovate the Megan's Law database. Currently, the DOJ database is unable to support additional fields of information. This bill would address this problem, and augment the information contained on Megan's Law to include SVP status and risk assessment information.

****

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STATE MANDATES

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MEMBER
STATE BOARD OF EQUALIZATION
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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,

GEORGE RUNNER
Second District

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LAW

< Calif. Follows Trend with Sex-Offender Crackdown

November 2, 2006 · 1:01 AM ET

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RENEE MONTAGNE, host:

Here in California, voters appear likely to approve the toughest law in the nation to clamp down on sex offenders. Under Proposition 83, anyone convicted of a sex crime would be banned from living within 2,000 feet of a school or park and required to undergo electronic monitoring for life.

As NPR's Ina Jaffe reports, it's the latest effort in a nationwide push to increase restrictions on the perpetrators of sex crimes.

INA JAFFE: California likes to think of itself as the nation's trendsetter. But if Proposition 83 passes, California will be following in the footsteps of Iowa. Sex offenders there are prohibited from living within 2,000 feet of a school or daycare center. Iowa prosecutors are united in trying to get the law overturned.

Mr. CORWIN RITCHIE (Executive Director, Iowa County Attorneys Association): We've seen no evidence that where a person sleeps has any connection to re-offending.

JAFFE: Corwin Ritchie is the executive director of the Iowa County Attorneys Association, which put out a report itemizing 14 different ways in which the residency restriction doesn't work. Here is one of them.

Mr. RITCHIE: People who got tired of trying to find a location to live and they could not do so, then just decide, well, I'm going to drop off even the registry. You no longer know where a sex offender lives. That certainly does not contribute to safety.

JAFFE: But that wouldn't happen in California, says Republican state Senator George Runner, Prop. 83's major proponent, because the measure requires lifetime GPS monitoring.

Mr. GEORGE RUNNER (Republican, California): You can't go underground. We know where you are.

JAFFE: And your location is not likely to be in a major city. Maps drawn by state Senate researchers show that nearly all of San Francisco and most of Los Angeles would be off limits to sex offenders. Runner says the maps aren't accurate, but even if they are, so be it.

Mr. RUNNER: My goal in this is to not make it easy for sex offenders to find a place to live. We just think that they shouldn't be living across the street from a school.

JAFFE: And no one will publicly say, oh, yes, they should, especially after high-profile tragedies like the rape and murder of 9-year-old Jessica Lunsford in Florida last year. Which is why polls show that Prop. 83 is likely to pass by a wide margin. In fact, there's been no organized opposition. State Assembly member Mark Leno, a San Francisco Democrat, is one of the few politicians to speak against the measure.

Mr. MARK LENO (Democrat, California): One way to help prevent further crimes of this sort is to stabilize the lives of these former offenders. So you don't make it more difficult for them to find housing, more difficult to find work. You don't break up their family units if you expect people to become again a productive member of society.

JAFFE: Leno knows he's unlikely to be even a speed bump in the path of this juggernaut. Laws like these have been passed in states all over the country in the past three years, according to Blake Harrison, criminal law specialist at the National Conference of State Legislatures.

Mr. BLAKE HARRISON (National Conference of State Legislatures): The important thing to remember is that this isn't something that is being driven by the state legislatures. This is something that has had overwhelming public support.

JAFFE: So 21 states now have GPS tracking of at least some sex offenders, says Harrison. And 17 states say they can't live or can't work around schools.

Mr. HARRISON: There's going to be some unintended consequences, and some of the research is not yet out on how effective some of these residency restrictions are.

JAFFE: California state Senator Dean Florez, a Democrat from the Central Valley, believes Prop. 83 will have at least one of those unintended consequences: pushing convicted sex offenders out of the cities and into rural areas like his.

Mr. DEAN FLOREZ (Democrat, California): It unfortunately says that city kids are more important in terms of being protected from sexual predators than rural kids.

JAFFE: Nevertheless, he supports the measure because California's law, like Iowa's, allows cities and counties to adopt further restrictions.

Mr. FLOREZ: We're going to have to look at swimming pools, and reclassifying them. We're going to have to look at farm worker housing complexes where children congregate.

JAFFE: In Iowa, one rural town took it further than that. Dyersville, where the movie Field of Dreams was shot, has banned convicted sex offenders from living anywhere in city limits.

Ina Jaffe, NPR News, Los Angeles.

MONTAGNE: And you can learn more details about California's Proposition 83 and also track measures that other states have taken against sex offenders at npr.org.

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CALIFORNIA STATE AUDITOR

Sex Offender Commitment Program

Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work

July 2011 Report 2010-116

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July 12, 2011 2010-116

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the state's Sex Offender Commitment Program (program), which targets a narrow subpopulation of sex offenders (offenders)—those who represent the highest risk to public safety because of mental disorders. Our analysis shows that between 2007 and 2010 less than 1 percent of the offenders whom the Department of Mental Health (Mental Health) evaluated as sexually violent predators (SVPs) met the criteria necessary for commitment.

Our report concludes that the Department of Corrections and Rehabilitation (Corrections) and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work. The current inefficiencies in the process for identifying and evaluating potential SVPs stems in part from Corrections' interpretation of state law. These inefficiencies were compounded by recent changes made by voters through the passage of Jessica's Law in 2006. Specifically, Jessica's Law added more crimes to the list of sexually violent offenses and reduced the required number of victims to be considered for the SVP designation from two to one, and as a result many more offenders became potentially eligible for commitment. Additionally, Corrections refers all offenders convicted of specified criminal offenses enumerated in law but does not consider whether an offender committed a predatory offense or other factors that make the person likely to be an SVP, both of which are required by state law. As a result, the number of referrals Mental Health received dramatically increased from 1,850 in 2006 to 8,871 in 2007, the first full year Jessica's Law was in effect. In addition, in 2008 and 2009 Corrections referred 7,338 and 6,765 offenders, respectively. However, despite the increased number of referrals it received, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. In addition, the courts ultimately committed only a small percentage of those offenders. Further, we noted that 45 percent of Corrections' referrals involved offenders whom Mental Health previously screened or evaluated and had found not to meet SVP criteria. Corrections' process did not consider the results of previous referrals or the nature of parole violations when re-referring offenders, which is allowable under the law.

Our review also found that Mental Health primarily used contracted evaluators to perform its evaluations—which state law expressly permits through the end of 2011. Mental Health indicated that it has had difficulty attracting qualified evaluators to its employment and hopes to remedy the situation by establishing a new position with higher pay that is more competitive with the contractors. However, it has not kept the Legislature up to date regarding its efforts to hire staff to perform evaluations, as state law requires, nor has it reported the impact of Jessica's Law on the program.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Legislature designed the Sex Offender Commitment Program (program) to target a narrow subpopulation of sex offenders (offenders): those who represent the highest risk to public safety because of mental disorders. However, between 2007 and 2010, very few offenders whom the Department of Mental Health (Mental Health) evaluated as potential sexually violent predators (SVPs) met the criteria necessary for commitment. As a result, the courts ultimately committed only a small percentage as SVPs even though Mental Health received more than 6,000 referrals in each of these years from the Department of Corrections and Rehabilitation (Corrections). Our analysis suggests that Corrections' and Mental Health's processes for identifying and evaluating SVPs are not as efficient as they could be and at times have resulted in the State performing unnecessary work.

The current inefficiencies in the program's process for evaluating potential SVPs are in part the result of Corrections' interpretation of state law. The inefficiencies were compounded by recent changes made by Jessica's Law. Specifically, when California voters passed Jessica's Law (Proposition 83) in 2006, they added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one; therefore, many more offenders became potentially eligible for commitment to the program. Corrections, in consultation with its Board of Parole Hearings (Parole Board), referred *all* offenders who had committed sexually violent offenses to Mental Health for evaluation as potential SVPs without first considering other factors, as required by law. Consequently, the number of referrals Corrections made to Mental Health increased dramatically, from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was effective.

However, Corrections' referral of every offender who has committed a sexually violent crime was not the intent of state law, which specifically mandates that Corrections determine when making referrals whether offenders' crimes were predatory and whether the offenders meet other criteria before referring them as potential SVPs. We believe that if Corrections screened offenders more closely before referring them to Mental Health, the number of Corrections' referrals might drop significantly. For example, in our review, we noted several instances in which Corrections referred offenders whose crimes were not predatory under the law's definition. Further, 45 percent of Corrections' referrals since 2005 involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs (SVP criteria). Although state law does

Audit Highlights . . .

Our review of the state's Sex Offender Commitment Program (program) between January 2005 and September 2010 revealed the following:

» *The Department of Corrections and Rehabilitation (Corrections) sent more than 6,000 referrals each year from 2007 through 2010 to the Department of Mental Health (Mental Health) for evaluation as potential sexually violent predators (SVPs).*

» *Many more offenders became potentially eligible for commitment to the program when California voters approved Jessica's Law (Proposition 83)—the law added more crimes to the list of sexually violent offenses and reduced the number of victims considered for this designation from two to one.*

» *Because Corrections referred all offenders who had committed sexually violent offenses to Mental Health for evaluation, this also contributed to the number of referrals increasing from 1,850 in 2006 to 8,871 in 2007, the first full year that Jessica's Law was in effect.*

- *We noted several instances in which Corrections referred offenders whose crimes were not predatory under the law.*
- *Since 2005, 45 percent of the referrals involved offenders whom Mental Health had previously screened or evaluated and had found not to meet the criteria to recommend commitment as SVPs.*

» *Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates as required and, thus, shortened the time available for Mental Health to perform reviews and schedule evaluations.*

continued on next page . . .

- *Although Mental Health's evaluation process appears to have been effective, for a time it sometimes assigned one evaluator, rather than the two required.*
- *Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings, however, the state law that expressly allows Mental Health to use contractors expires in 2012.*
- *Mental Health did not submit required reports to the Legislature about its efforts to hire staff to evaluate offenders and about the impact of Jessica's Law on the program.*

not specifically require Corrections to consider the outcomes of previous screenings or evaluations when making referrals, the law directs Corrections to refer only those offenders it deems likely to be SVPs, and we believe that it is logical and legal for Corrections to take into account Mental Health's previous conclusions about specific offenders when reaching such determinations. Additionally, Corrections failed to refer offenders to Mental Health at least six months before their scheduled release dates, as required by state law. These late referrals shortened the time available for Mental Health to perform reviews and schedule evaluations.

To handle the high number of offenders referred by Corrections, Mental Health put into place processes that enable it to determine whether offenders are possible SVPs before scheduling full evaluations. We believe that these processes are appropriate given that Corrections refers offenders without first determining whether their crimes were predatory and whether the offenders are likely to be SVPs. Specifically, when Mental Health receives a referral from Corrections, it first conducts an administrative review to ensure that it has all of the information necessary to make a determination. It then conducts a clinical screening—a file review by a psychologist—to rule out any offender who is not likely to meet SVP criteria and thus does not warrant a full evaluation. Between February 2008 and June 2010, Mental Health also used administrative reviews to identify offenders whom it had previously screened or evaluated and whose new offenses or violations were unlikely to change the likelihood that they might be SVPs. Mental Health rescinded this policy in June 2010. We also noted that for a short time, Corrections had a similar policy that it also rescinded. Nonetheless, we believe Mental Health should work with Corrections to reduce unnecessary referrals.

After completing the administrative reviews and clinical screenings, Mental Health conducts full evaluations of potential SVPs, a process that involves face-to-face interviews unless offenders decline to participate. Although we found that in general Mental Health's evaluation process appears to have been effective, we noted that for a time it did not always assign to cases the number of evaluators that state law requires. After the passage of Jessica's Law, Mental Health relied on the opinion of one evaluator rather than two when concluding that 161 offenders did not meet SVP criteria. Mental Health's program manager stated that Mental Health temporarily followed this practice of using just one evaluator because it did not have adequate staff to meet its increased workload. She also indicated that Corrections referred 98 of the offenders again, and Mental Health determined during subsequent screenings and evaluations that they did not meet SVP criteria.

A potential challenge that Mental Health faces in meeting its increased workload involves the mental health care professionals who perform its evaluations. Mental Health used between 46 and 77 contractors each year from 2005 through 2010 to perform evaluations and some clinical screenings. However, when the state law that expressly permits Mental Health to use contractors expires in 2012, Mental Health will need to justify its continued use of contractors, which the State Personnel Board has ruled against in the past.[1] According to a program manager, Mental Health primarily uses contracted evaluators to perform the evaluations because the staff psychologists are still completing the necessary experience and training. Mental Health stated that it has had difficulty attracting qualified evaluators to state employee positions because the compensation is not competitive for this specialized area of forensic mental health clinical work. To remedy the situation, Mental Health is working to establish a new position that will provide more competitive compensation. If Mental Health has not hired sufficient staff by 2012, the program manager stated that it plans to propose a legislative amendment to extend the authority to use contractors.

Finally, Mental Health did not submit to the Legislature required reports about the department's efforts to hire staff to evaluate offenders and the impact of Jessica's Law on the program. Mental Health did not provide us with a timeline indicating the expected dates for completing these reports, nor did the department explain why it had not submitted them. Without the reports, the Legislature may not have the information necessary for it to provide oversight and make informed decisions.

Recommendations

To increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the referral process to adhere more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.

[1] State law requires Mental Health to use contractors for third and fourth evaluations when the first two evaluators disagree. The change of law in 2012 will not affect Mental Health's use of contractors for this purpose.

- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.

- Assessing the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier before each offender's scheduled release date in order to meet its six-month statutory deadline.

To make certain that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and the impact of Jessica's Law on the program.

Agency Comments

Mental Health indicated that it is taking actions that are responsive to each of our recommendations. For example, Mental Health stated it is already working with Corrections to streamline the referral process to eliminate duplicate effort and increase efficiency.

Corrections indicated that it agrees that improvements can be made in streamlining the referral process and that it has already implemented steps to improve the timeliness of its referrals to Mental Health. Corrections stated that it would address the specific recommendations in its corrective action plan at 60-day, six-month, and one-year intervals.

Introduction

Background

The Legislature created the Sex Offender Commitment Program (program) in 1996 to target a small but extremely dangerous subset of sex offenders (offenders) who present a continuing threat to society because their diagnosed mental disorders predispose them to engage in sexually violent criminal behavior. State law designates these offenders as sexually violent predators (SVPs).

The Sexually Violent Predator Act (Act) governs the program. The Act lists crimes that qualify as sexually violent offenses and defines *predatory* to mean acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purposes of victimization. The Act also requires that SVPs have diagnosed mental disorders that make them likely to engage in future sexually violent behavior if they do not receive appropriate treatment and custody. Determining whether offenders are SVPs and committing them for treatment is a civil rather than criminal process. Thus, crimes that offenders committed before passage of the Act can contribute to offenders' commitment as SVPs.

Since the passage of the Act, certain state laws have further amended the program. Specifically, in September 2006, Senate Bill 1128 became law and added more crimes to the list of sexually violent offenses that could cause offenders to qualify as SVPs. More dramatically, on November 7, 2006, California voters passed Proposition 83, also known as Jessica's Law.[2] In addition to creating residency restrictions and global positioning system monitoring for certain sex offenders, Jessica's Law added more crimes to the list of sexually violent offenses, and it also decreased from two to one the number of victims necessary for the SVP designation. Both Senate Bill 1128 and Jessica's Law abolished the previous two-year term of civil commitment for an SVP and instead established a commitment term of indeterminate length that includes yearly evaluations to determine an SVP's readiness for release.

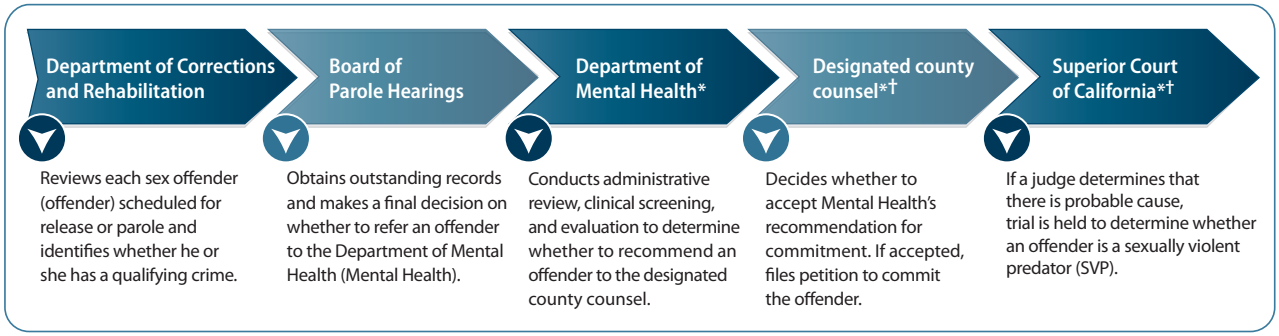
The Process for Identifying, Evaluating, and Committing SVPs

The Department of Mental Health (Mental Health) and the Department of Corrections and Rehabilitation (Corrections), including its Board of Parole Hearings (Parole Board), play critical roles in identifying, evaluating, and recommending the commitment of an offender as an SVP. However, a judge or jury

[2] The law was named in memory of Jessica Lunsford, a nine-year-old girl from Florida who died in 2005 as a result of a violent sexual crime committed by a previously convicted sex offender.

at a California superior court makes the final determination of an offender's SVP status. Figure 1 shows the relationships among the steps in the process. If at any point in this process an offender fails to meet SVP criteria, the offender completes the term of his or her original sentence or parole.

Figure 1
The Multiagency Process for Committing a Sexually Violent Predator



Sources: Mental Health, Department of Corrections and Rehabilitation, Board of Parole Hearings, and California Welfare and Institutions Code, Section 6600 et seq.

* During this phase of the process, the agency may find that the offender does not meet SVP criteria, in which case the offender completes the term of his or her original sentence or parole.

† Recommendation is made to the designated counsel in the county where the offender was convicted most recently. The designated counsel files the request to commit in the same county.

Corrections' Identification of Potential SVPs

State law requires Corrections and its Parole Board to screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories. To complete these screenings, the law requires Corrections to use a structured screening instrument developed and updated by Mental Health in consultation with Corrections. According to state law, when Corrections determines through this screening process that offenders may be SVPs, it must refer the offenders to Mental Health for further evaluation at least six months before the offenders' scheduled release dates.[3]

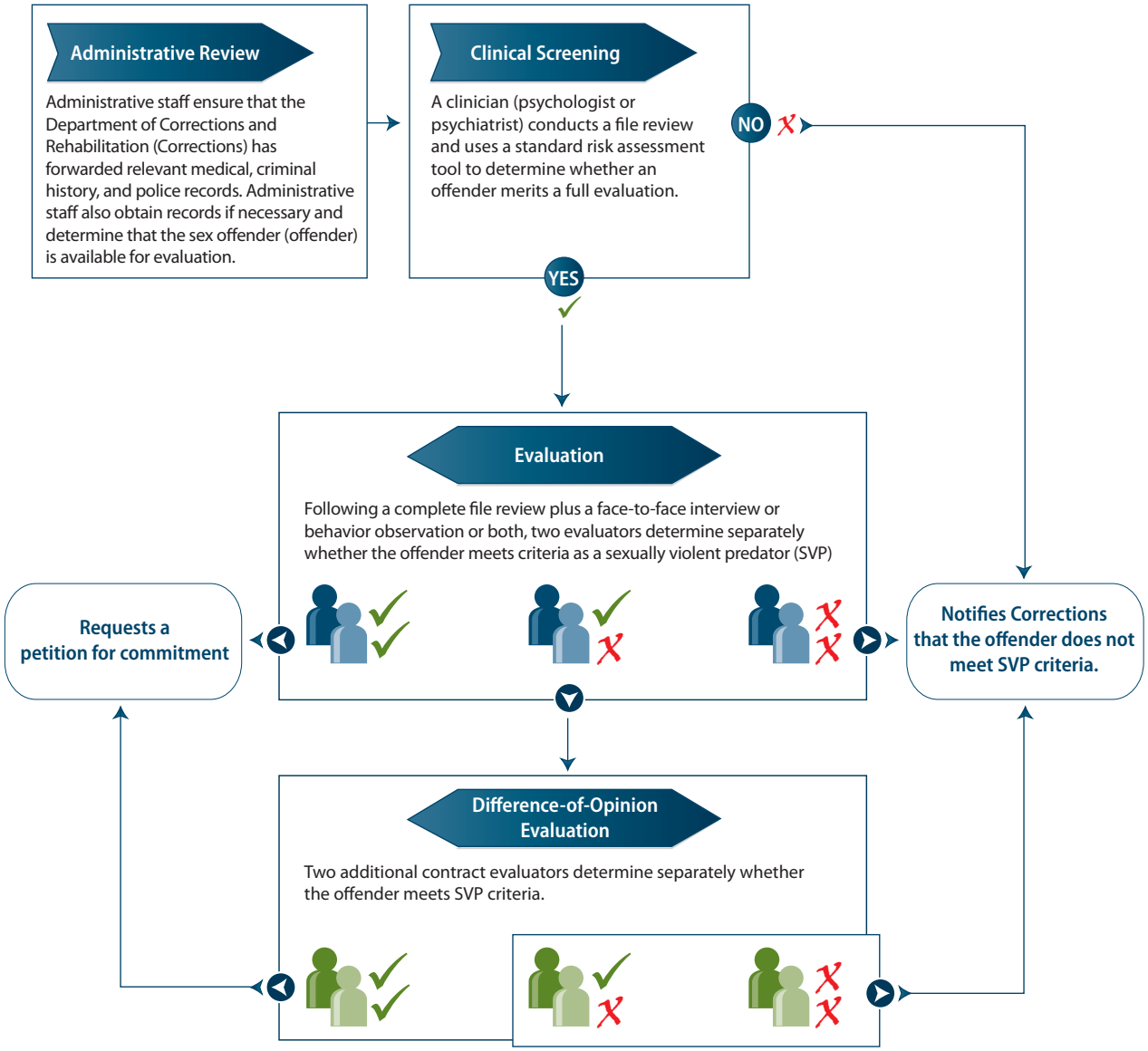
Mental Health's Evaluation of Potential SVPs

State law requires that Mental Health evaluate as potential SVPs any offenders whom Corrections refers to Mental Health. It specifies that for each of these offenders, Mental Health must conduct a full evaluation consisting of assessments by two mental health professionals who must be psychiatrists or psychologists. However, in practice, Mental Health does not conduct an evaluation of every offender

[3] If the offender has been in Corrections' custody for less than nine months or if judicial or administrative action modified his or her release date, the sixth-month timeline does not apply.

referred by Corrections; rather, it first conducts an administrative review and then a clinical screening to determine whether an offender merits an evaluation. We discuss these administrative reviews and clinical screenings in more detail later in the report. Figure 2 illustrates the process that Mental Health uses to determine whether it should recommend to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) the offenders referred by Corrections for commitment to the program.

Figure 2
Department of Mental Health's Process for Reviewing, Screening, and Evaluating a Sex Offender



Sources: California Welfare and Institutions Code, Section 6601 et seq. and program manager for the Department of Mental Health's Sex Offender Commitment Program.

Indicators That a Sex Offender Is a Sexually Violent Predator

The Department of Mental Health (Mental Health) uses the following criteria defined in state law and clarified by court decisions to determine whether a sex offender is a sexually violent predator (SVP):

- The individual has been convicted of a sexually violent offense, such as rape when committed with force, threats, or other violence.
- The offender suffers from a diagnosed mental disorder.
  - The law defines *diagnosed mental disorder* as including conditions affecting the emotional and volitional capacity that predispose the person to committing criminal sexual acts to a degree that the person is a menace to the health and safety of others.
  - Most diagnoses involve paraphilia or related disorders—sexual behavior that is atypical and extreme and that causes distress to the individual or harm to others. However, other disorders may qualify under the law.
- The diagnosed mental disorder makes the person likely to engage in sexually violent, predatory criminal behavior in the future without treatment and custody.
  - The law defines *predatory* offenses as acts against strangers, persons of casual acquaintance, or persons with whom the offender established relationships primarily for the purpose of victimization.
  - Regulations require evaluators to use standardized risk assessment tools and to consider various risk factors to determine the likelihood that an offender will commit future crimes.

Sources: Bureau of State Audits' review of case files, interviews of Department of Mental Health staff and evaluators, analysis of California Welfare and Institutions Code, Section 6600 et seq., Title 9 of the California Code of Regulations, and California Supreme Court decisions.

State law requires Mental Health's evaluators to determine whether the offender meets the criteria for the SVP designation (SVP criteria), which the text box describes in more detail. If the first two evaluators agree that the offender meets the criteria, Mental Health must request a petition for civil commitment, as discussed in the next section. If the first two evaluators disagree, the law requires that Mental Health arrange for two additional evaluators to perform evaluations. The two additional evaluators must meet certain professional criteria and cannot be employees of the State. If the two additional evaluators agree that the offender meets the criteria, Mental Health must request a commitment. If the two additional evaluators disagree or if they agree that the offender has not met the criteria, Mental Health generally cannot request a commitment unless it believes the evaluator applied the law incorrectly.

The Court's Commitment and the State's Treatment of SVPs[4]

When Mental Health's evaluators conclude that an offender meets SVP criteria, state law requires that Mental Health request that the designated counsel of the county in which the offender was most recently convicted file a petition in court to commit the offender. If the county's designated counsel agrees with Mental Health's recommendation, he or she must file in superior court a petition for commitment of the offender. If a judge finds probable cause that the offender is an SVP, he or she orders a trial for a final determination of whether the offender is an SVP. If the offender or petitioning attorney does not demand a jury trial, the judge conducts the trial without a jury. During the court proceedings, offenders are entitled to representation by legal counsel and medical experts. Each county's board of supervisors appoints a designated counsel, the district attorney or county counsel responsible for handling SVP cases.

[4] We did not audit the designated counsels, the courts, or the actual treatment programs because they were outside the scope of our review.

The court commits offenders it finds are SVPs to secure facilities for treatment, and these commitments have indeterminate terms. According to Mental Health's program manager, in May 2011 there were 521 male SVPs and one female SVP committed to state hospitals. State law requires that Mental Health examine the mental condition of committed SVPs at least once a year. If Mental Health determines that offenders either no longer meet SVP criteria or that less restrictive treatment would better benefit them yet not compromise the protection of their communities, Mental Health must ask a court to review their commitments for unconditional discharge or for conditional release.[5] If the court grants conditional releases to committed SVPs, they will enter community treatment and supervision under the Conditional Release Program, which Mental Health operates. According to Mental Health's program manager, the department has eight SVPs in the Conditional Release Program as of May 2011.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to review the process that Corrections and its Parole Board use to refer offenders to Mental Health as well as Mental Health's process for evaluating these offenders to determine whether they qualify as SVPs. Specifically, the audit committee directed us to determine whether Mental Health's process includes a face-to-face interview for every sex offender referred by Corrections, whether Mental Health uses staff or contractors to perform the evaluations, and whether the evaluators' qualifications meet relevant professional standards and laws and regulations. If we determined that Mental Health uses contractors, the audit committee directed us to determine when the practice began and whether using contractors is allowable under state law. To understand the impact of Jessica's Law on the program, the audit committee directed us to identify the number of offenders that Corrections and its Parole Board referred to Mental Health in each year since 2006. The audit committee also asked us to identify the number of referred offenders who received an in-person screening by Mental Health, the number screened by Mental Health through case-file review only, the number of offenders that ultimately received a civil commitment to the program, and the number of offenders released who then reoffended. Finally, the audit committee asked us to determine whether Mental Health submitted reports mandated by the Legislature. Table 1 lists the methods we used to answer these audit objectives.

[5] Nothing in the Act prohibits committed SVPs from asking courts to release them even if the SVPs do not have a recommendation from Mental Health.

The scope of the audit did not include reviews of the designated counsels' efforts or the courts' processes for committing offenders as SVPs. The scope also did not include the treatment provided to offenders at state hospitals or through the Conditional Release Program.

Table 1
Methods of Addressing Audit Objectives

AUDIT OBJECTIVE	METHOD
Understand the criteria for committing sexually violent predators (SVPs) under the Sex Offender Commitment Program (program).	Reviewed relevant laws, regulations, and other background materials.
Review the process at the Department of Corrections and Rehabilitation (Corrections) and the Board of Parole Hearings for identifying and referring potential SVPs to the Department of Mental Health (Mental Health).	• Interviewed key officials from the Classification Services Unit of Corrections' Division of Adult Institutions and from the Board of Parole Hearings. • Reviewed Corrections' policy manuals.
Understand the process at Mental Health for screening and evaluating potential SVPs.	• Interviewed key officials at Mental Health's Long-Term Care Services Division. • Interviewed evaluators under contract to Mental Health. • Reviewed Mental Health's policy manuals.
Assess the effectiveness of Corrections' and Mental Health's processes for referring, screening, and evaluating offenders.	Reviewed Mental Health's case files, clinical screening forms, and written evaluations of sex offenders (offenders). Review of case files included Corrections' referral packets.
Determine the extent to which contractors perform evaluations. Assess the qualifications of contractors who conduct evaluations and of state employees who could also conduct evaluations.*	• Reviewed bidding documentation, contracts, and relevant supporting documents, as well as personnel files. • Reviewed the qualifications required by law. • Analyzed data from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database).†
Identify the number of offenders whom Corrections referred to Mental Health. Determine the number of assessments, screenings, and evaluations that Mental Health performed. Identify the number of offenders whom courts ultimately committed as SVPs. Determine the recidivism rate of those not committed as SVPs. Assess the impact of Jessica's Law on the program.	Analyzed data from Mental Health's database and from Corrections' Offender Based Information System.†
Determine whether Mental Health complied with the requirement to report to the Legislature the status of its efforts to hire state employees to replace contractors. Determine whether Mental Health complied with the requirement to report to the Legislature the impact of Jessica's Law on the program.	Requested copies of required reports. Interviewed key officials at Mental Health and at the California Health and Human Services Agency.

Sources: Joint Legislative Audit Committee audit request #2010-116 for audit objectives, Bureau of State Audits' planning and scoping documents, and analysis of information and documentation identified in the table column titled Method above.

* We did not note any reportable exceptions related to the qualifications of the contractors who conduct evaluations or the state employees who could also conduct evaluations. The contractors met the qualifications required of them by state law as well as the more stringent requirements that Mental Health imposed through its competitive contracting process. As the Audit Results section of this report discusses, state employees have rarely conducted evaluations to date. However, all of the program's state-employed consulting psychologists who conduct clinical screenings met the minimum qualifications specified by the Department of Personnel Administration for their positions.

† We assessed the reliability of the data in these systems and reported our results beginning on page 11.

To address several of the audit objectives approved by the audit committee, we relied on data provided by Mental Health and Corrections. The U.S. Government Accountability Office, whose standards we follow, requires us to assess the sufficiency and appropriateness of computer-processed information. To comply with this standard, we assessed each system for the purpose for which we used the data in this report. We assessed the reliability of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process (as displayed in Table 3 on page 14), and the extent to which contractors perform evaluations (as displayed in Figure 5 on page 31). Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy and completeness of Mental Health's database. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For completeness testing, we haphazardly sampled 29 referrals and tested to see if these referrals exist in the database and found no errors. For accuracy testing, we selected a random sample of 29 referrals and tested the accuracy of 21 key fields for these referrals. Of the 21 key fields tested we found three errors in six key fields. Based on our testing and analysis, we found that Mental Health's database is not sufficiently reliable for the purpose of identifying the number of referrals made by Corrections to Mental Health, the number of referrals at each step in the SVP commitment process, and the extent to which contractors perform evaluations. Nevertheless, we present these data as they represent the best available source of information.

In addition, we assessed the reliability of Corrections' Offender Based Information System (Corrections' database) for the purpose of identifying the number of referrals that ultimately resulted in an offender's being committed as an SVP, and the recidivism rate of those not committed as SVPs. Specifically, we performed data-set verification procedures and electronic testing of key data elements, and we assessed the accuracy of Corrections' database. We did not perform completeness testing because the documents needed are located at the 33 correctional institutions located throughout the State, so conducting such testing is impractical. In performing data-set verification and electronic testing of key data elements, we did not identify any issues. For accuracy testing, we selected a random sample of 29 offenders and tested the accuracy of 12 key fields related to these offenders and found eight errors. Based on our testing and analysis, we found that Corrections' database is of undetermined reliability to be used for the purpose of identifying the number of referrals that ultimately resulted in an offender being committed as an SVP, and to calculate the recidivism rate of those not committed as SVPs.

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Audit Results

Although the Department of Mental Health Evaluates Thousands of Offenders Each Year, the Courts Commit Only a Tiny Percentage as Sexually Violent Predators

As the Introduction explains, the passage of Jessica's Law in 2006 resulted in significantly more sex offenders (offenders) becoming potentially eligible for commitment as sexually violent predators (SVPs) under the Sex Offender Commitment Program (program). However, the courts have committed very few of the thousands of offenders whom the Department of Corrections and Rehabilitation (Corrections) referred to the Department of Mental Health (Mental Health) for evaluation. In fact, as Table 2 shows, the actual number of offenders whom the courts committed between 2007 and 2010 represent less than 1 percent of Corrections' referrals to Mental Health. Even if the courts committed all of the offenders still awaiting trial, these offenders would represent less than 2 percent of all referrals. Due to the limitations of its database, Mental Health did not track the specific reasons why referred offenders did not meet the criteria for commitment as SVPs (SVP criteria). Such tracking could help Mental Health better identify trends.

Table 2
Number of Program Referrals and Commitments
2005 Through 2010

	2005	2006	2007	2008	2009	2010*
Total referrals	512	1,850	8,871	7,338	6,765	6,126
Total commitments†	15	27	43	16	3	0
Commitments as a percentage of total referrals each year	2.93%	1.46%	0.48%	0.22%	0.04%	-

Source: Bureau of State Audits' analysis of data collected from the Department of Mental Health's (Mental Health) Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

Jessica's Law Has Not Resulted in the Commitment of Many More Offenders

As the Introduction discusses, Jessica's Law expanded the population of offenders eligible for the program and thus substantially increased the number of evaluations that

Mental Health has performed each year. Table 3 shows that since the passage of Jessica's Law, the total number of Corrections' referrals of offenders to Mental Health ballooned from 1,850 in 2006 to 8,871 in 2007. As a result, the number of offenders whom Mental Health reviewed or evaluated at each stage of its process also increased from 2006 to 2007. Mental Health completed administrative reviews for nearly 96 percent of the referrals it received from Corrections.[6] Mental Health then forwarded about half of these cases to clinical screenings in which clinicians determined whether the offenders merited full evaluations.[7] The number of these evaluations that Mental Health performed rose from 594 in 2006 to 2,406 in 2007. Although the number of evaluations dropped from its high point in 2007, the number was still four times higher in 2010 than in 2005, the year before Jessica's Law took effect.

Table 3
Number of Referrals in Each Step of the Sexually Violent Predator Commitment Process
2005 Through 2010

ENTITY	STEP IN THE COMMITMENT PROCESS	2005	2006	2007	2008	2009	2010*	TOTAL	PERCENTAGE OF TOTAL REFERRALS
Department of Corrections and Rehabilitation	Referrals to Mental Health	512	1,850	8,871	7,338	6,765	6,126	31,462	100.0%
Department of Mental Health (Mental Health)	Administrative reviews	509	1,448	8,230	7,137	6,738	6,013	30,075	95.6
	Clinical screenings†	1	304	4,400	3,537	3,470	3,823	15,535	49.4
	Evaluations	217	594	2,406	1,366	966	887	6,436	20.5
	Recommendations to designated counsel	48	92	181	99	52	51	523	1.7
The Court System	Designated counsel petitions	46	88	169	92	39	23	457	1.5
	Probable cause hearings	46	88	169	92	38	23	456	1.4
	Trials	37	77	150	72	22	4	362	1.2
	Offenders committed‡	15	27	43	16	3	0	104	0.3

Source: Bureau of State Audits' analysis of data collected from Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† According to Mental Health's program manager, Mental Health did not implement clinical screenings until sometime in 2006.

‡ These numbers could increase; according to Mental Health's program manager, about 300 offenders are still awaiting trial.

[6] The total number of referrals to Mental Health does not agree with the number of referrals that Mental Health reviewed in part because the department did not consistently record in its database that it had completed reviews.

[7] According to Mental Health's program manager, the department introduced the clinical screening into its process specifically to address the dramatic rise in referred offenders that Jessica's Law prompted. We discuss these screenings in more depth later in the report.

Despite the increased number of referrals, as of September 2010, the relative percentage of offenders whom the courts committed as SVPs declined each year after the first full year that Jessica's Law was in effect. According to Mental Health's program manager, about 300 offenders are still awaiting trial. Nevertheless, even if the courts committed all of those awaiting trial, the total number committed would still represent a tiny fraction of all referrals from Corrections. As Table 3 shows, Mental Health screened a large number of offenders referred by Corrections, indicating that neither department displayed a lack of effort in identifying eligible SVPs. However, despite the increased number of evaluations, Mental Health recommended to the district attorneys or the county counsels responsible for handling SVP cases (designated counsels) about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law.

Thus, Jessica's Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism. Additionally, Mental Health's program manager provided an analysis it performed of the types of crimes offenders committed who it recommended for commitment to designated counsels since Jessica's Law took effect. This analysis found that, for every recommendation associated with an offender who committed one of the new crimes added by Jessica's Law, Mental Health made four recommendations related to offenders who committed crimes that would have made them eligible for commitment before the passage of Jessica's Law. This disparity could suggest that crimes added under Jessica's Law as sexually violent offenses correlate less with the likelihood that offenders who commit such crimes are SVPs than do the crimes designated in the original Sexually Violent Predator Act.

Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts.

Because Mental Health Has Not Tracked the Reasons Offenders Did Not Qualify as SVPs, It Cannot Effectively Identify Trends and Implement Changes to Increase Efficiency

Although analyzing Mental Health's data allowed us to determine the number of referrals at each step of the process, the data lack sufficient detail for us to determine why specific offenders' cases did not progress further in that process. For example, the data did

not show the number of offenders that Mental Health declined to forward to evaluations because the offenders did not have mental disorders rather than because they did not commit predatory crimes. Although the database includes a numeric code that can identify Mental Health's detailed reason for determining why an offender does not meet SVP criteria, Mental Health did not use these codes for the results of its clinical screenings. Instead, when a clinician determined that the offender did not meet SVP criteria, the numeric code used indicated only that the result was a negative screening and was not specific to the clinician's conclusions recorded on the clinical screening form. For offenders whom Mental Health determines do not meet SVP criteria based on evaluations, Mental Health's database has detailed codes available that convey the specific reasons for its decisions on cases. However, for the period under review, Mental Health did not consistently use the codes. According to the program manager, in January 2009 Mental Health stopped using the detailed codes because it determined that the blend of codes used to describe a full evaluation were too confusing and did not result in meaningful data. Because Mental Health did not use the codes consistently, it could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria.

Mental Health could not identify trends throughout the program indicating why referred offenders did not meet SVP criteria because it did not use codes for its database consistently.

We examined some of the conclusions recorded by Mental Health's psychologists on their clinical screening forms, and we found that the psychologists provided specific reasons for their conclusions that offenders did not meet SVP criteria. For example, some offenders did not meet the criteria because they were not likely to engage in sexually violent criminal behavior, while in other cases the offenders lacked diagnosed mental disorders. Because clinicians do identify the specific reasons for their conclusions on their screening forms, Mental Health should capture this information in its database so that it can inform itself and others about the reasons offenders throughout the program do not meet SVP criteria.

Additionally, although the documented reasons why individual offenders are in Corrections' custody are available to Mental Health, the department cannot summarize this information across the program. This situation prevents Mental Health from tracking the number of offenders that Corrections referred because of parole violations as opposed to new convictions. According to the program manager, Mental Health cannot summarize these data because some of the information appears in the comments or narrative case notes boxes in Mental Health's database. As a result, we used Corrections' data, not Mental Health's, to provide the information in this report about the reasons that offenders were in Corrections' custody during the period that we reviewed. By improving its ability to summarize this type of data, Mental Health could better inform itself and Corrections about trends in the

reasons offenders do not qualify for the program. Mental Health could then use its knowledge of these trends to improve the screening tool that Corrections uses to identify potential SVPs. As of June 2011, Mental Health's program manager indicated that the program is submitting requests to the department's information technology division to upgrade the database to track this type of information.

Few Offenders Have Been Convicted of Sexually Violent Offenses Following a Decision Not to Commit Them

To take one measure of the effectiveness of the program's referral, screening, and evaluation processes, we analyzed data from Corrections and Mental Health to identify offenders who were not committed as SVPs but who carried out subsequent parole violations and felonies. In particular, we looked for instances in which these offenders later perpetrated sexually violent offenses. As Table 4 on the following page shows, 59 percent of these offenders whom Corrections released between 2005 and 2010 subsequently violated the conditions of their paroles. To date, only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed. Although higher numbers of offenders were subsequently convicted of felonies that were not sexually violent offenses, even those numbers were relatively low.

Only one offender who did not meet SVP criteria after Corrections had referred him to Mental Health was later convicted of a sexually violent offense during the nearly six-year period we reviewed.

Corrections' Failure to Comply With the Law When Referring Offenders Has Significantly Increased Mental Health's Workload

State law outlines Corrections' role in referring offenders to Mental Health for evaluation as potential SVPs. Specifically, Section 6601(b) of the California Welfare and Institutions Code mandates that Corrections and its Board of Parole Hearings (Parole Board) screen offenders based on whether they committed sexually violent predatory offenses and on reviews of their social, criminal, and institutional histories and then determine if they are likely to be SVPs. However, in referring offenders, Corrections and the Parole Board did not screen offenders based on all of these criteria. As a result, Corrections referred many more offenders to Mental Health than the law intended. Moreover, Corrections' process resulted in a high number of re-referrals, or referrals of offenders that Mental Health previously concluded were not SVPs. State law does not prevent Corrections from considering the results of past evaluations, and we believe that revisiting the results of offenders' earlier screenings and evaluations is reasonable even if the law does not explicitly require Corrections to do so. According to

Mental Health, for fiscal year 2009–10, the State paid $75 for each clinical screening that its contractors completed and an average of $3,300 for each evaluation. By streamlining its process, Corrections could reduce unnecessary referrals and the associated costs.

Table 4
Reasons for Sex Offenders' Return to the Department of Corrections and Rehabilitation After a Referral to the Department of Mental Health
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Number of offenders with first time referrals who the Department of Corrections and Rehabilitation (Corrections) subsequently released	**231**	**1,407**	**5,780**	**2,834**	**2,023**	**1,237**	**13,512**
Sex Offenders (offenders) who later violated parole†	92	987	4,212	1,434	868	318	7,911
Percentage of total offenders	**40%**	**70%**	**73%**	**51%**	**43%**	**26%**	**59%**
Offenders who were later convicted of a new felony†	1	39	89	4	1	0	134
Percentage of total offenders	**0%**	**3%**	**2%**	**0%**	**0%**	**0%**	**1%**
Offenders who were later convicted of a new sexually violent offense‡	0	0	1	0	0	0	1
Percentage of total offenders	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**	**0%**

Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and from Corrections Offender Based Information System (OBIS) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* These figures represent data for a partial year—January 2010 through September 2010.

† Some overlap may exist among these categories because it is possible for an offender to return to Corrections' custody more than once and for a different reason each time.

‡ The offender in this category is also represented in the *New Felony* category.

In addition, Corrections and the Parole Board frequently did not meet the statutory deadline for referring offenders to Mental Health at least six months before the offenders' scheduled release from custody. In 2009 and 2010, the median amount of time for a referral that Corrections and the Parole Board made to Mental Health was less than two months before the scheduled release date of the offender. Because Corrections and its Parole Board referred many offenders with little time remaining before their scheduled release dates, Mental Health may have had to rush its clinical screening process and therefore may have caused it to evaluate more offenders than would have otherwise been necessary.

Corrections Refers Offenders to Mental Health Without First Determining Whether They Are Likely to Be SVPs

As discussed previously, state law defines the criteria that Corrections and its Parole Board must use to screen offenders to determine if they are likely to be SVPs before referring the offenders to Mental Health. Specifically, state law mandates that Corrections must consider whether an offender committed a sexually violent predatory offense, and the law defines *predatory* acts as those directed toward a stranger, a person of casual acquaintance, or a person with whom an offender developed a relationship for the primary purpose of victimizing that individual. The law also specifies that Corrections and the Parole Board must use a structured screening instrument developed and updated by Mental Health in consultation with Corrections to determine if an offender is likely to be an SVP before referring him or her. Further, state law requires that when Corrections determines through the screening that the person is likely to be an SVP, it must refer the offender to Mental Health for further evaluation.

However, during the time covered by our audit, Corrections and its Parole Board referred all offenders convicted of sexually violent offenses to Mental Health without assessing whether those offenses or any others committed by the offender were *predatory* in nature or whether the offenders were likely to be SVPs based on other information that Corrections could consider. Instead, it left these determinations solely to Mental Health. Moreover, although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law. According to the chief of the classification services unit (classification unit chief) for Corrections' Division of Adult Institutions and the former program operations chief deputy for the Parole Board (parole board deputy),[8] Corrections and the Parole Board did not determine if a qualifying offense or any other crime was predatory when they made a referral. Our legal counsel advised us that according to the plain language of Section 6601(b) of the California Welfare and Institutions Code, Corrections and the Parole Board must determine whether the person committed a predatory offense and whether the person is likely to be an SVP before his or her referral to Mental Health.

Although Corrections and Mental Health consulted about the referral process, the process Corrections used fell short of the structured screening instrument specified by law.

Because Corrections did not consider whether offenders' crimes were predatory and whether the offenders were likely to be SVPs, it referred many more offenders to Mental Health than the law intended. This high number of referrals unnecessarily

[8] Subsequent to our interview, this official moved to Corrections' Division of Adult Institutions.

increased Mental Health's workload at a cost to the State. We found several referrals in our sample involving offenders who did not commit predatory offenses. For example, we reviewed cases in which Corrections referred an offender for a sexual crime against his own child, and another for a sexual crime committed against the offender's own grandchild. Although these crimes were serious, they did not meet the law's definition of *predatory* because the victims were not strangers or mere acquaintances.

Mental Health and Corrections' current processes also miss an opportunity to make the referral process more efficient by eliminating duplicate efforts. When considering whether an offender requires an evaluation, Mental Health's clinical screeners use a risk assessment tool—California's State Authorized Risk Assessment Tool for Sex Offenders (STATIC-99R)—as part of determining the individual's risk of reoffending. Corrections uses this same tool in preparation for an adult male offender's release from prison. According to the parole board deputy, Corrections' Division of Adult Parole Operations completes a STATIC-99R assessment approximately eight months before the offender's scheduled parole. Although state law does not specifically require Corrections to consider the STATIC-99R scores as part of its screening when making referrals to Mental Health, doing so would eliminate duplicate efforts and reduce Mental Health's workload because Corrections would screen out, or not refer, those offenders it determines have a low risk of reoffending. This type of screening would reduce costs at Mental Health because fewer clinical screenings would be necessary.

Although Corrections is not required to consider risk assessment scores to determine an offender's likelihood of reoffending when making referrals, doing so would eliminate duplicate efforts and reduce Mental Health's workload.

When we discussed the possibility of Corrections using the STATIC-99R as part of its screening of offenders before it refers them to Mental Health, the parole board deputy stated that he was unaware that Corrections ever considered this approach. However, the California High Risk Sex Offender and Sexually Violent Predator Task Force—a gubernatorial advisory body whose membership included representatives from Corrections, Mental Health, and local law enforcement, among others—recommended in a December 2006 report that Corrections incorporate STATIC-99R into its process. According to the classification unit chief, Corrections is researching the status of its efforts regarding the task force's recommendation.

Many of Corrections' Referrals Involve Offenders Whom Mental Health Has Already Determined Do Not Qualify as SVPs

One of the most useful actions Corrections could take to increase its efficiency when screening offenders for possible referral to Mental Health is to consider the outcome of previous referrals.

Corrections' screening process does not consider whether Mental Health has already determined that an offender does not meet the criteria to be an SVP. As a result, these re-referrals significantly affect Mental Health's caseload. As Table 5 shows, 45 percent of Corrections' referrals to Mental Health since 2005 were for offenders whom it had previously referred and whom Mental Health had concluded did not meet SVP criteria. Many of these cases had progressed only as far as the clinical screenings before Mental Health determined that the offenders did not meet SVP criteria. Table 5 also shows that for 18 percent, or 5,772, of these re-referral cases, Mental Health had previously performed evaluations and concluded that the offenders did not qualify as SVPs. For these 5,772 re-referral cases, Mental Health's previous evaluations occurred within one year for 39 percent, or 2,277, of the cases. Another 30 percent took place within two years.

Table 5
Number of Referrals to the Department of Mental Health for Sex Offenders Who Previously Did Not Meet Sexually Violent Predator Criteria
2005 Through 2010

	2005	2006	2007	2008	2009	2010*	TOTAL
Total referrals	**512**	**1,850**	**8,871**	**7,338**	**6,765**	**6,126**	**31,462**
Number of referrals of sex offenders (offenders) whom the Department of Mental Health (Mental Health) had previously found did not qualify as sexually violent predators (SVPs) without evaluations	31	53	1,254	2,306	2,511	2,382	8,537
Percentage of total referrals	**6%**	**3%**	**14%**	**31%**	**37%**	**39%**	**27%**
Number of referrals of offenders who previously received evaluations and did not qualify as SVPs	164	167	721	1,448	1,640	1,632	5,772
Percentage of total referrals	**32%**	**9%**	**8%**	**20%**	**24%**	**27%**	**18%**
Total number of referrals of offenders who previously did not meet SVP criteria	195	220	1,975	3,754	4,151	4,014	14,309
Percentage of total referrals	**38%**	**12%**	**22%**	**51%**	**61%**	**66%**	**45%**

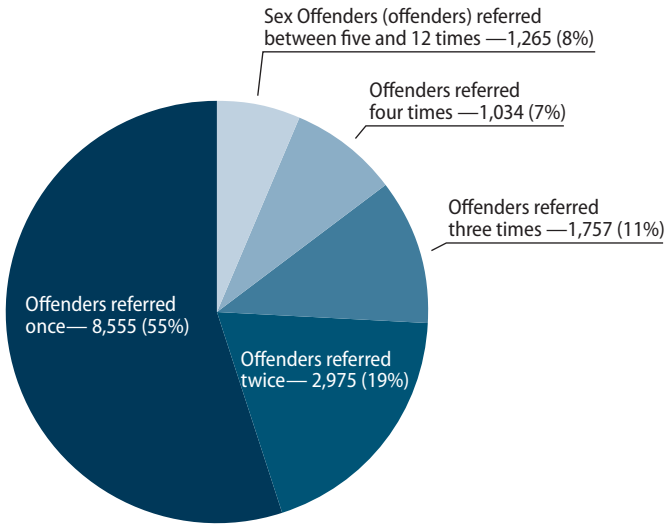
Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* These figures represent numbers for a partial year—January 2010 through September 2010.

To illustrate the magnitude of this re-referral problem, we noted that Corrections' approximately 31,500 referrals to Mental Health for the period under review represented nearly 15,600 offenders. Of these individuals, Corrections referred almost half, or 7,031 offenders, to Mental Health on at least two occasions. In fact, Figure 3 on the following page shows that Corrections referred 8 percent of offenders between five and 12 times between 2005 and 2010.

Figure 3
Number of Times the Department of Corrections and Rehabilitation Referred Sex Offenders to the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) for 2005 through 2010.

Notes: The data for 2010 represent figures for a partial year—January 2010 through September 2010. As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

Although the law does not specifically require Corrections to consider the outcome of offenders' previous referrals in its screening process, we believe it is reasonable in these cases for Corrections to consider whether the nature of a parole violation or a new crime might modify an evaluator's opinion. This consideration would be in line with the law's direction that Corrections refer only those offenders likely to be SVPs based on their social, institutional, and criminal histories. Many previously referred offenders are, in fact, unlikely to be SVPs given Mental Health's past assessments that they did not meet SVP criteria. By considering whether previously referred offenders warrant new referrals, Corrections could eliminate duplicate efforts and reduce unnecessary workload and costs.

Among all referrals made during the period we reviewed, 63 percent involved offenders in Corrections' custody due to parole violations. Although not all parole violators could be screened out of re-referral through a process that considers the nature of the parole violations, many could be. When we discussed with Mental Health whether it had asked Corrections to cease making re-referrals in those instances in which parole violations were not new sex-related offenses, Mental Health provided us

with a copy of a September 2007 Corrections' memorandum to its staff stating that Mental Health and Corrections had agreed to streamline the referral procedures for parole violators. The memorandum instructed Corrections' staff not to refer offenders if Mental Health had previously determined that the offenders were not SVPs and if the offenders were currently in custody for specified parole violations that Mental Health's psychologists had determined from a clinical standpoint would not change the offenders' risk of committing new sexual offenses. However, five months later, another Corrections' memorandum rescinded these revised procedures. Corrections' classification unit chief told us that although she was not with the program at the time, she believed that the former Governor's Office had instructed the departments to discontinue using the streamlined process because it did not comply with the law. We asked Corrections for more details about this legal determination, but Corrections could not provide any additional information. According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

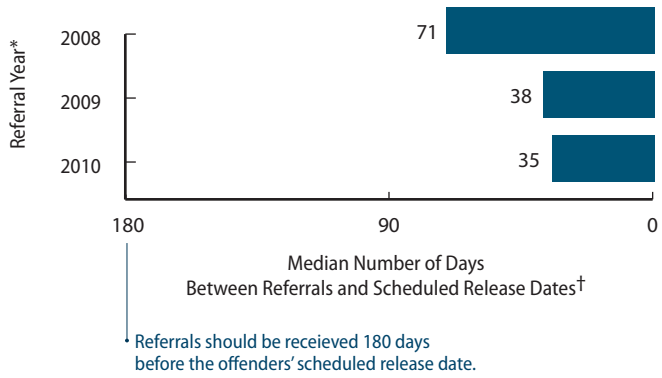
According to our legal counsel, a streamlined process that includes consideration of the outcomes of previous referrals and the nature of parole violations is allowed under state law.

Corrections' Failure to Refer Offenders Within Statutory Time Frames May Force Mental Health to Rush Its Screening Process

State law requires that Corrections refer offenders to Mental Health at least six months before their scheduled release dates. However, according to the median amount of time for referrals displayed in Figure 4 on the following page, Corrections did not meet this deadline for a significant portion of referrals during the three years for which Corrections and Mental Health were able to provide data to us.[9] Corrections' procedure manual states that it will screen offenders nine months before their scheduled release dates unless it receives them with less than nine months to their release, in which case the department has alternate procedures. This policy, if followed, should ensure that Corrections forwards cases to Mental Health at least six months before the offenders' release, as required by law. However, the parole board deputy noted that issues such as workload and missing documents can prevent Corrections from making these referrals in a timely manner.

[9] State law does not apply this requirement for offenders whose release dates are changed by judicial or administrative actions or for offenders in Corrections' custody for less than nine months. Although we could not exclude from our data analysis those offenders whose release dates were altered by judicial or administrative actions, our review of case files at Mental Health revealed no obvious instances in which such alterations occurred. This observation suggests that judicial or administrative actions were not the primary cause of Corrections' lack of timeliness. We excluded from our analysis those offenders who, as of the date of their referral, had been in Corrections' custody for less than nine months.

Figure 4
Median Number of Days Between the Department of Corrections and Rehabilitation's Referrals to the Department of Mental Health and Sex Offenders' Scheduled Release Dates at Time of Referral



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database) and the Offender Based Information System (OBIS) from the Department of Corrections and Rehabilitation (Corrections) for 2008 through 2010.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. Also, data from Corrections' OBIS are of undetermined reliability. However, these are the best available sources of this information.

* Data analysis September 16, 2008, through September 2010.

† Analysis does not include sex offenders who were in Corrections' custody for less than nine months as of the date of their referral.

Late referrals shorten the amount of time available for Mental Health to evaluate offenders properly. In fact, in one case we reviewed, Mental Health received the referral one day before the offender's scheduled release. In another case, Mental Health received a referral for an offender 11 days before his scheduled release. Although Mental Health can request that the Parole Board place a temporary hold on an offender's release to extend the amount of time that Mental Health has to evaluate him or her, state law requires that the Parole Board have good cause for extending the offender's stay in custody. Mental Health's program manager stated that in practice, Mental Health requests a hold from the Parole Board when it determines that it cannot complete an evaluation by the offender's scheduled release date. The program manager also stated that sometimes the time remaining before an offender's release is so short that the department must rush an offender through a clinical screening in order to ensure that it can request a hold.

Although Mental Health Did Not Conduct Full Evaluations of All Referred Offenders, It Generally Ensured That Offenders Were Properly Screened and Evaluated

Our review indicated that Mental Health's process for determining whether it should perform full evaluations of referred offenders has been generally effective and appropriate. As discussed earlier,

the number of offenders whom Corrections referred to Mental Health increased significantly after the passage of Jessica's Law. To manage this workload, Mental Health used the administrative reviews to ensure that it has all of the information necessary to perform clinical screenings, which it uses to determine whether offenders warrant full evaluations. Between February 2008 and June 2010, Mental Health also used the administrative reviews as opportunities to identify offenders who did not warrant clinical screenings because Mental Health had evaluated these offenders previously and had determined that they did not meet SVP criteria. Mental Health rescinded this policy, and, as previously discussed, Corrections also rescinded its similar policy for screening out certain offenders from re-referral. However, we believe that Mental Health should work with Corrections to reduce unnecessary referrals.

We believe that Mental Health should work with Corrections to reduce unnecessary referrals.

Mental Health has for the most part conducted evaluations of offenders effectively; however, for a time, it did not always assign the required number of evaluators to cases. Specifically, Mental Health's data indicates that it did not arrange for two evaluators to conduct the evaluations for 161 offenders, as state law directs. In addition, for at least a year prior to August 2008, Mental Health did not assign a fourth evaluator to each case in which the first two evaluators disagreed as to whether the offender met SVP criteria and in which the third evaluator also did not believe that the offender met SVP criteria. In cases requiring a third and fourth evaluator to determine whether an offender meets SVP criteria, state law may need clarification. Nonetheless, we believe that the selective use of a fourth evaluator in those instances when the third evaluator concludes the offender meets SVP criteria is a cost-effective approach. Because the third and fourth evaluators must both agree that the offender meets SVP criteria, the conclusion of the fourth evaluation is relevant only if the third evaluator concludes that the offender meets SVP criteria.

Mental Health's Administrative Review and Clinical Screening Processes Appear Prudent

As the Introduction discusses, state law specifies that Mental Health must conduct a full evaluation of every offender Corrections refers to it. However, in practice, Mental Health conducts an administrative review and clinical screening before performing a full evaluation. Although state law does not specify that Mental Health should perform these preliminary processes, doing so appears to save the State money without unduly affecting public safety because these procedures allow Mental Health to save the cost of evaluations for offenders who do not meet SVP criteria.

According to Mental Health's program manager, when Corrections began referring more offenders in response to Jessica's Law, the number of incomplete and invalid referrals also increased. The program manager stated that Mental Health implemented the administrative reviews and clinical screenings as quality improvement measures. Specifically, the administrative review ensures that each referral includes all the necessary documentation, including police records, and that the offender is available for evaluation. During the clinical screening, a clinician reviews the offender's file and determines whether the offender merits an evaluation. This screening is necessary because Corrections neither assesses whether an offender committed a predatory offense or is likely to re-offend, nor evaluates the nature of an offender's parole violation before it makes a referral.

Additionally, Mental Health implemented a streamlined process for addressing re-referred offenders. As directed in Mental Health's policy that was in effect between February 2008 and June 2010, Mental Health's case managers could decline to schedule clinical screenings for offenders whom Mental Health had previously screened or evaluated and determined did not meet SVP criteria if the case managers determined the offenders had not committed new crimes, sex-related parole violations, or any other offenses that might contribute to a change in their mental health diagnoses. The policy provided screening guidelines for staff to consider and examples of factors that demonstrated when a case did not warrant a clinical screening and for which Mental Health—after its administrative review—could notify Corrections that the offender did not meet SVP criteria.

Our analysis of Mental Health's data showed that between 2005 and 2010, Mental Health decided that half of the roughly 31,500 referrals did not warrant clinical screenings. Our review of six specific cases suggests that Mental Health followed its own policy and notified Corrections that the offenders did not meet SVP criteria when case managers determined that the nature of the parole violations would not change the outcomes of previous screenings or the evaluations of re-referred offenders. For example, in three of these cases, Mental Health's case managers noted that parole violations were not related to sexual behavior and would not change the most recent evaluations' results. These evaluations had concluded that each of these offenders lacked an important element of SVP criteria: a diagnosable mental disorder or the likelihood that the offender would engage in sexually violent criminal behavior. When we asked Mental Health why it had developed the policy allowing case managers to decide that some re-referred cases did not warrant clinical screenings, the program manager explained that clinical determinations are highly unlikely to alter if there are no new issues that are substantive or related to sexual offenses.

Therefore, to streamline the already overburdened process, Mental Health believed it was within the law and in the public interest to conduct only administrative reviews for certain offenders. However, according to the program manager, Mental Health implemented a more in-depth review due to several high-profile sexual assault cases.

As explained previously, for a brief time Corrections and Mental Health had an agreement that they designed to eliminate unnecessary re-referrals. However, apparently in response to concerns from the former Governor's Office, Corrections stopped using this agreement. Although Mental Health could reinstitute its administrative review policy, we believe the better course of action is for Mental Health to work with Corrections to revise its current screening and referral process so that Corrections considers STATIC-99R scores, previous clinical screening and evaluation results, and the nature of any parole violations before referring cases to Mental Health. Moreover, our legal counsel believes that the law allows such a process. In light of the volume of referrals to Mental Health, such revisions to the screening and referral process would be a reasonable, responsible way to reduce the costs and duplicative efforts associated with these referrals.

Although Mental Health Did Not Always Assign the Required Number of Evaluators, It Properly Recommended Offenders to Designated Counsels When Warranted

Our review of 30 cases in which Mental Health completed evaluations of offenders found that Mental Health generally followed its processes for conducting evaluations and asked the designated counsels to request commitments when warranted. Mental Health based its requests to the designated counsels on its evaluators' thorough assessments, which included face-to-face interviews with offenders unless they declined to participate. The evaluators also conducted extensive record reviews and used evaluation procedures that applied industry standard diagnostic criteria to decide whether mental disorders were present and employed risk assessment tools to determine the offenders' risk of re-offending.

Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders.

Although Mental Health properly recommended that designated counsels request commitments when warranted, Mental Health's data show that it did not always assign the proper number of evaluators to assess offenders. As the Introduction explains, state law requires Mental Health to designate two evaluators to evaluate offenders likely to be SVPs. When two evaluators disagree about whether an offender meets the criteria for the program, state law requires Mental Health to arrange for two additional evaluators

We found that in 161 instances Mental Health arranged for only one initial evaluator—rather than the required two—to assess each offender before notifying Corrections that the offender did not meet SVP criteria.

to assess the offender. However, when we examined some case files and analyzed Mental Health's data for January 2005 through September 2010, we found that in 161 instances Mental Health arranged for only one initial evaluator to assess each offender before notifying Corrections that the offender did not meet SVP criteria. The data are also supported by our case file reviews, in which we found one instance where Mental Health notified Corrections that an offender did not meet SVP criteria based on a single evaluator's assessment, which found that the offender did not have a diagnosable mental disorder.

When we asked Mental Health about these 161 referrals, the program manager indicated that for a short time after the passage of Jessica's Law, Mental Health implemented a process stipulating that if the first evaluator determined that the offender did not have a diagnosable mental disorder, Mental Health did not refer the offender to a second evaluator. The program manager stated that the passage of Jessica's Law had not allowed Mental Health sufficient time to put in place the infrastructure and resources needed to respond to the magnitude of referrals it received from Corrections during the period that we reviewed. Mental Health acknowledged that this process, which it communicated to staff verbally, began in October 2006 and ended in June 2007, after it had obtained and trained a sufficient number of evaluators. The program manager provided a list of offenders and indicated that Corrections later re-referred 98 of the 161 offenders that had previously received only one evaluation. She indicated that Mental Health determined either during subsequent clinical screenings or during evaluations that these 98 offenders did not meet SVP criteria and that the remaining offenders have not been referred to Mental Health again.

We also found that Mental Health did not always assign two additional evaluators to resolve differences of opinion between the first two evaluators about referred offenders; however, we believe that this practice had no impact on public safety. Specifically, our analysis of Mental Health's data shows that in 254 closed referrals, Mental Health arranged for a third evaluator only and not for a fourth. According to e-mail correspondence provided by the program manager, for at least a year before August 2008, Mental Health's practice was to assign a fourth evaluator to a case only if a third evaluator concluded that the offender met SVP criteria. According to the program manager, the former chief of the program rescinded this practice in August 2008 after verbal consultation with the department's assistant chief counsel. E-mail correspondence from the former chief of the program to staff indicates that this practice did not comply with state law.

From both a legal and budgetary perspective, we believe that the practice of obtaining a fourth evaluation only if a third evaluator concludes that the offender is an SVP is a practical way to manage the program. If the third evaluator believes the offender is not an SVP, state law generally would not allow Mental Health to recommend the offender for commitment even if the fourth evaluator concludes that the offender meets the necessary criteria. According to Mental Health's own analysis, the average cost of an evaluation completed by a contractor for fiscal year 2009–10 was $3,300; therefore, the department's avoiding unnecessary fourth evaluations could result in cost savings. Our legal counsel advised us that the law is open to interpretation on this issue. Thus, we suggest that Mental Health reinstitute this practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

We suggest that Mental Health reinstitute the practice of preventing unnecessary fourth evaluations either by issuing a regulation or by seeking a statutory change to clarify the law.

Mental Health Has Used Contractors to Perform Its Evaluations Due to Limited Success in Increasing Its Staff

Because it has made limited progress in hiring and training more staff, Mental Health has used contractors to complete the evaluations of sex offenders whom it has considered for the program. According to the program manager, the evaluation of sex offenders is a highly specialized field, and Mental Health believes it has not had staff with the skills and experience necessary to perform the evaluations. Mental Health reported to us that as a result, for fiscal years 2005–06 through 2009–10, it paid nearly $49 million to contractors who performed work related to its evaluations of offenders. Although current state law expressly authorizes Mental Health to use contractors for all types of evaluations, this permission will expire on January 1, 2012.[10] Because Mental Health has had difficulty in hiring staff, acquiring a sufficient work force to conduct its evaluations is likely to pose a significant challenge when the law expires.

In April 2007 an employee union requested that the State Personnel Board review Mental Health's evaluator contracts for compliance with the California Government Code, Section 19130(b), which allows contracting only when those contracts meet certain conditions, such as that state employees cannot perform the work. The State Personnel Board ruled against Mental Health, finding that Mental Health had not adequately demonstrated that state employees could not perform the tasks that it had assigned

[10] Although express permission for contractors to perform all types of evaluations expires on January 1, 2012, state law will continue to require that Mental Health use contractors to perform the difference-of-opinion evaluations. As the Introduction details, state law specifically mandates that these evaluators cannot be employees of the State.

to contractors. Because of the ruling, the State Personnel Board disapproved Mental Health's contracts effective 90 days after its March 2008 decision.[11] In September 2008, to provide Mental Health with the capacity to perform the required evaluations, the Legislature amended state law to give the department express permission to use contractors for all types of evaluations until January 1, 2011. The Legislature later extended this authorization until January 1, 2012.[12]

According to the program manager, Mental Health believes that no current state employee position requires minimum qualifications sufficient to perform the function of the SVP evaluator. As evidenced by Mental Health's requirements for its contract evaluators, the department believes evaluators need specific experience in diagnosing the sexually violent population and at least eight hours of expert witness testimony related to SVP cases. Currently, as the program manager explained, Mental Health does not consider state-employed consulting psychologists qualified to perform evaluations, although it has provided two employees with additional training, mentoring, and experience to prepare them to perform evaluations. These two employees have completed three evaluations but have yet to provide expert witness testimony. The program manager also stated that Mental Health has had difficulty hiring consulting psychologists with qualifications similar to those of the contracted evaluators because the compensation for the consulting psychologist positions is not competitive with what is available to psychologists in private practice for this specialized area of forensic mental health clinical work. Mental Health completed a salary analysis in March 2010 that found that the average hourly pay for the contractors to perform evaluations and clinical screenings is approximately $124 per hour, compared to the $72 per hour—including benefits—that state-employed consulting psychologists earn.

Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff.

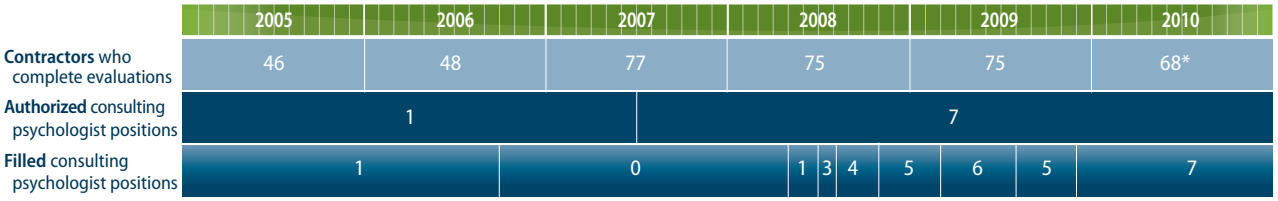
Mental Health's reliance on contractors has led to costs that are higher than if it had been able to hire and use its own staff. As Figure 5 indicates, from January 2005 through September 2010, Mental Health used between 46 and 77 contractors each year to complete its workload of evaluations and clinical screenings, while some or all of its seven positions for state-employed consulting psychologists were at times vacant. Mental Health reported to us that for fiscal years 2005–06 through 2009–10, it spent nearly $73 million on the contractors. This amount is equivalent

[11] The State Personnel Board's decision said that it is permissible for Mental Health to use contractors to perform difference-of-opinion evaluations.

[12] If the director of Mental Health notifies the Legislature and the Department of Finance that it has hired a sufficient number of state employees before this date, the express permission will end earlier than January 1, 2012.

to an average of roughly $188,000 per year per contractor. By comparison, for fiscal year 2009–10, each consulting psychologist earned $110,000 (excluding benefits). The $73 million included payments for activities that the contractors performed separate from the initial screening and evaluation process, such as providing expert witness testimony in court and updating evaluations for offenders awaiting trial or already committed as SVPs. The amount also included approximately $49 million related to the evaluation of offenders whom Corrections referred to Mental Health. The reported estimate of costs for clinical screenings performed by contractors during the same period was almost $169,000.[13]

Figure 5
Number of Contractors and State-Employed Consulting Psychologists Used by the Department of Mental Health 2005 Through 2010



Sources: Bureau of State Audits' analysis of data collected from the Department of Mental Health's Sex Offender Commitment Program Support System (Mental Health's database); summary of the number of authorized positions for the consulting psychologist classification and the number of employees filling those positions by year provided by the program manager of the Sex Offender Commitment Program.

Note: As discussed in the Scope and Methodology section of this report, data from Mental Health's database are not sufficiently reliable. However, it is the best available source of this information.

* The data for 2010 contractors represents a partial year—January 2010 through September 2010.

To address the difficulty in hiring qualified evaluators as state employees, Mental Health is working to establish a new evaluator classification. The proposed position is a permanent-intermittent position—a state classification in which the employee works periodically or for a fluctuating portion of a full-time work schedule and is paid by the hour. Mental Health plans for these employees to work as its caseload requires. This proposed new classification offers a more competitive compensation than does the standard consulting psychologist position, so Mental Health believes that it will now attract more individuals as potential employees. The qualifications for the new classification are similar to the requirements placed on Mental Health's current contractors who perform evaluations. Mental Health anticipates that the State

[13] Contractors were paid $75 per clinical screening. This cost does not cover the screenings performed by the state-employed consulting psychologists.

Personnel Board will consider its request for the new position classification in August 2011. If the State Personnel Board approves the classification, Mental Health plans initially to seek authority for 10 positions and then increase its positions by 10 in each subsequent fiscal year until eventually it can rely completely on employees to perform the evaluations. The only exceptions to Mental Health's reliance on state-employed evaluators will occur when it must use contractors to provide difference-of-opinion evaluations, as required by law. If it has not hired sufficient staff by 2012, the program manager stated that Mental Health plans to propose a legislative amendment to extend its authorization to use contractors.

Mental Health Has Not Reported to the Legislature About Its Efforts to Hire State Employees as Evaluators or About the Impact of Jessica's Law on the Program

Mental Health has not submitted required reports about its efforts to hire qualified state employees to conduct evaluations of potential SVPs and about the impact of Jessica's Law on the program. State law requires Mental Health to report semiannually to the Legislature on its progress in hiring qualified state employees to complete evaluations. Although the first of these reports was due by July 10, 2009, Mental Health has yet to submit any reports. In addition, state law required Mental Health to provide a report to the Legislature by January 2, 2010, on the effect of Jessica's Law on the program's costs and on the number of offenders evaluated and committed for treatment. However, Mental Health also failed to submit this report. In May 2011 Mental Health's external audit coordinator stated that the reports were under development or review. Mental Health did not explain why the reports were late or specify a time frame for the reports' completion.

The Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders and how profoundly Jessica's Law has affected Mental Health's workload.

Because Mental Health has not submitted the required reports, the Legislature and other interested parties may have been unaware that Mental Health has made little progress in hiring state employees as evaluators of offenders. The Legislature and other interested parties may also have been unaware of how profoundly Jessica's Law has affected Mental Health's workload. As a result, the Legislature may not have had the information necessary to provide appropriate oversight and to make informed decisions.

Recommendations

To enable it to track trends and streamline processes, Mental Health should expand the use of its database to capture more specific information about the offenders whom Corrections refers to it and the outcomes of the screenings and evaluations that it conducts.

To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determining whether the offender committed a predatory offense.
- Reviewing results from any previous screenings and evaluations that Mental Health completed and considering whether the most recent parole violation or offense might alter the previous decision.
- Using STATIC-99R to assess the risk that an offender will reoffend.

To allow Mental Health sufficient time to complete its screenings and evaluations, Corrections should improve the timeliness of its referrals. If it does not achieve a reduction in referrals from implementing the previous recommendation, Corrections should begin the referral process earlier than nine months before offenders' scheduled release dates in order to meet its six-month statutory deadline.

To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that when resolving a difference of opinion between the two initial evaluators of an offender, Mental Health must seek the opinion of a fourth evaluator only when a third evaluator concludes that the offender meets SVP criteria.

To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval for a new position classification for evaluators. If the State Personnel Board approves the new classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

To ensure that the Legislature can provide effective oversight of the program, Mental Health should complete and submit as soon as possible its reports to the Legislature about Mental Health's efforts to hire state employees to conduct evaluations and about the impact of Jessica's Law on the program.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date:	July 12, 2011
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IT Audit Support:	Michelle J. Baur, CISA, Audit Principal Richard W. Fry, MPA
Consultants:	Loretta Hall, CISA, CISSP Celina Knippling, CPA

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

(Agency response provided as text only.)

California Department of Mental Health
1600 9th Street
Sacramento, CA 95814

June 21, 2011

Elaine M. Howle, CPA
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Mental Health (DMH) has prepared its response to the draft report entitled "Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work". The DMH appreciates the work performed by the Bureau of State Audits and the opportunity to respond to the draft report.

Please contact Vallery Walker, Internal Audits, at (916) 651-3880 if you have any questions.

Sincerely,

(Signed by: Cliff Allenby)

CLIFF ALLENBY
Acting Director

Enclosure

Response to the Bureau of State Audits
Draft Report Entitled

"Department of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work"

Recommendation: To enable it to track trends and streamline processes, the Department of Mental Health (Mental Health) should expand the use of its database to capture more specific information about the offenders the Department of Corrections and Rehabilitation (Corrections) refers to it and the outcomes of the screenings and evaluations it conducts.

Response: Mental Health has identified database enhancements that will enable the Sex Offender Commitment Program (SOCP) to track more specific information related to victims, offenders, offenses, screening results, evaluations results, referral decisions and actions taken by the District Attorneys and the courts. These changes will enable Mental Health to track trends and streamline processes.

Recommendation: To eliminate duplicative effort and increase efficiency, Corrections should not make unnecessary referrals to Mental Health. Corrections and Mental Health should jointly revise the structured screening instrument so that the referral process adheres more closely to the law's intent. For example, Corrections should better leverage the time and work it already conducts by including the following steps in its referral process:

- Determine whether the offender committed a predatory offense.
- Review the result of any previous screenings and evaluations Mental Health completed and consider whether the most recent parole violation or offense might alter the previous decision.
- Use the State Authorized Risk Assessment Tool for Sex Offenders to assess the risk that an offender will reoffend.

Response: Mental Health and Corrections are already working together to further streamline the referral process to eliminate duplicative effort and increase efficiency.

Recommendation: To ensure that it will have enough qualified staff to perform evaluations, Mental Health should continue its efforts to obtain approval of a new position classification for SVP evaluators. If the State Personnel Board (SPB) approves the classification, Mental Health should take steps to recruit qualified individuals as quickly as possible. Additionally, Mental Health should continue its efforts to train its consulting psychologists to conduct evaluations.

Response: Mental Health has submitted its SVP Evaluator classification proposal to the Department of Personnel Administration. It is anticipated that the SPB will hear the proposal in the month of August 2011. SOCP will immediately recruit SVP Evaluators once this classification is approved by SPB and position authority has been granted. SOCP Consulting Psychologists currently attend trainings on legal and clinical practices related to full evaluations and trends in the forensics field. Efforts to train consulting psychologists to conduct evaluations will continue.

In addition, Mental Health plans to propose legislative amendments to extend its authorization to use contractors for all types of evaluations prior to the expiration of its current authorization of January 1, 2012.

Recommendation: To reduce costs for unnecessary evaluations, Mental Health should either issue a regulation or seek a statutory amendment to clarify that, when resolving a difference of opinion between the first set of evaluators, Mental Health must only seek the opinion of a fourth evaluator when a third evaluator concludes that the offender meets the SVP criteria.

Response: Mental Health is evaluating options to reduce costs for unnecessary evaluations.

Recommendation: To ensure the Legislature can provide effective oversight, Mental Health should complete and submit reports to the Legislature on its efforts to hire state employees and on the impact of Jessica's Law on the program as soon a possible.

Response: The Administration is in the process of finalizing these reports.

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(Agency response provided as text only.)

California Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001

June 21, 2011

Ms. Elaine M. Howle, State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

The California Department of Corrections and Rehabilitation (CDCR) is submitting this letter in response to the Bureau of State Audits' report (BSA) entitled ***Departments of Mental Health and Corrections and Rehabilitation: Streamlining the Process for Identifying Potential Sexually Violent Predators Would Reduce Unnecessary or Duplicative Work.***

The Legislature created the Sex Offender Commitment Program to target sex offenders who present the highest risk to public safety due to their diagnosed mental disorders which predisposes them to engage in sexually violent criminal behavior. As such, CDCR is committed to adhering to the statutory law governing this program and will always err on the side of caution in regards to public safety when making sex offender referrals to the Department of Mental Health (DMH). CDCR appreciates the thoughtful review conducted by BSA and the concerns for duplicate work and potential savings for the state of California. CDCR notes the current screening process developed collaboratively by both departments provides the ability for the State to meet the intent of the Sexually Violent Predator statute in screening and identifying offenders without requiring duplicative mental health assessments by both departments, which would have a negative fiscal impact on the State. We agree that improvements can be made in streamlining the process and have already implemented steps to improve the timeliness of our referrals to DMH. We look forward to carefully reviewing the recommendations in this report and will continue our work with DMH to increase efficiency.

We would like to thank BSA for their work on this report and will address the specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

(Signed by: Scott Kernan)

SCOTT KERNAN
Undersecretary, Operations (A)

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press