

ITEM 3

PROPOSED 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 *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

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

Department of Finance, Requester

EXECUTIVE SUMMARY

On November 19, 2018 the California Supreme Court affirmed the Fourth District Court of Appeal's holding that the Commission's Decision on the Department of Finance's (Finance's) Request for Mandate Redetermination on the *Sexually Violent Predators (CSM-4509)* program, 12-MR-01, was incorrectly decided, because of a flawed interpretation of Government Code sections 17556(f) and 17570.¹ The Court held as follows:

[W]e affirm the judgment of the Court of Appeal insofar as it reversed the judgment of the trial court. We remand the matter to the Court of Appeal, so it can direct the trial court to modify its judgment as follows: the trial court shall issue a writ of mandate directing the Commission to set aside the decisions challenged in this action and to reconsider the test claim in a manner consistent with this opinion.²

On April 29, 2019, the Superior Court for the County of San Diego filed its judgment and writ, which was served on the Commission on June 5, 2019, directing the Commission as follows:

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,

¹ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

² *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 218.

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.³

Notice of Entry of Judgment was served on the Commission on June 5, 2019.⁴

Setting aside these decisions of the Commission means that the original Statement of Decision on the Test Claim *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998; the Parameters and Guidelines, *Sexually Violent Predators* (CSM-4509), 05-PGA-03 adopted September 24, 1998 and amended October 30, 2009; and the Statewide Cost Estimate *Sexually Violent Predators*, CSM-4509, adopted March 25, 1999; are each reinstated by operation of law, and have not been superseded. Pursuant to the Supreme Court's remand to the superior court directing the Commission to reconsider Finance's Request for Mandate Redetermination consistent with the Court's opinion, staff issued on February 8, 2019, a *Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand*, 12-MR-01-R. The Reconsideration of the Request for Mandate Redetermination on Remand is tentatively set for the September 27, 2019 hearing, and staff will issue a Draft Proposed Decision for comment at least eight weeks prior to that date.

Conclusion and Recommendation

Accordingly, pursuant to the court's judgment and writ, staff recommends the Commission adopt the following order setting aside:

1. The New Test Claim Decision on *Sexually Violent Predators* (CSM-4509), 12-MR-01, adopted December 6, 2013.⁵

³ Exhibit A, 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).

⁴ Exhibit B, Notice of Entry of Judgment Served to the Commission June 5, 2019.

⁵ Exhibit C, New Test Claim Decision, *Sexually Violent Predators* (CSM-4509), 12-MR-01, adopted December 6, 2013.

2. The Statement of Decision and Parameters and Guidelines Amendment, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted May 30, 2014 (corrected on February 27, 2015).⁶
3. The Statewide Cost Estimate, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted March 27, 2015.⁷

⁶ Exhibit D, Statement of Decision and Parameters and Guidelines Amendment, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted May 30, 2014 (corrected on February 27, 2015).

⁷ Exhibit E, Statewide Cost Estimate, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted March 27, 2015

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:

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); Statutes 1996, Chapter 4 (AB 1496);

As Modified by:

Proposition 83, General Election, November 7, 2006

Filed on January 15, 2013

By the Department of Finance, Requester.

Case No.: 12-MR-01

Sexually Violent Predators (CSM-4509)

[PROPOSED] 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 COURT'S JUDGMENT AND WRIT

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

(Adopted July 26, 2019)

**PROPOSED ORDER TO SET ASIDE DECISIONS
PURSUANT TO COURT'S JUDGMENT AND WRIT**

The Commission in State Mandates (Commission) heard and decided the Proposed Order during a regularly scheduled hearing on July 26, 2019. [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 Order to Set Aside Decisions Pursuant to Court's Judgment and Writ by a vote of [vote will be included in the adopted Order], as follows:

Member	Vote
Lee Adams, County Supervisor	
Keely Bosler, 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	

On November 19, 2018 the California Supreme Court affirmed the Fourth District Court of Appeal's holding that the Commission's Decision on the Department of Finance's (Finance's) Request for Mandate Redetermination on the *Sexually Violent Predators (CSM-4509)* program, 12-MR-01, was incorrectly decided, because of a flawed interpretation of Government Code sections 17556(f) and 17570.⁸ The Court held as follows:

[W]e affirm the judgment of the Court of Appeal insofar as it reversed the judgment of the trial court. We remand the matter to the Court of Appeal, so it can direct the trial court to modify its judgment as follows: the trial court shall issue a writ of mandate directing the Commission to set aside the decisions challenged in this action and to reconsider the test claim in a manner consistent with this opinion.⁹

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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.¹⁰

⁸ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196.

⁹ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 218.

¹⁰ Exhibit A, 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,

Notice of Entry of Judgment was served on the Commission on June 5, 2019.¹¹

In accordance with the court's judgment and writ of mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached documents:

1. The New Test Claim Decision on *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted December 6, 2013.¹²
2. The Statement of Decision and Parameters and Guidelines Amendment, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted May 30, 2014 (corrected on February 27, 2015).¹³
3. The Statewide Cost Estimate, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted March 27, 2015.¹⁴

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)37-2014-00005050-CU-WM-CTL, in accordance with *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196).

¹¹ Exhibit B, Notice of Entry of Judgment Served to the Commission June 5, 2019.

¹² Exhibit C, New Test Claim Decision, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted December 6, 2013.

¹³ Exhibit D, Statement of Decision and Parameters and Guidelines Amendment, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted May 30, 2014 (corrected on February 27, 2015).

¹⁴ Exhibit E, Statewide Cost Estimate, *Sexually Violent Predators (CSM-4509)*, 12-MR-01, adopted March 27, 2015.