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Commission on
State Mandates

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LATE FILING

March 22, 2019

Ms. Heather Halsey
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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As originally enacted by the Legislature, the Sexually Violent Predator Act (SVPA) defined a narrow category of unusually dangerous sex offenders and established a process for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, subs. (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, subs. (b)-(d), 6608, subs. (a)-(d).)

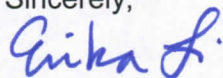
Because all of these costs flow from the definition of a “sexually violent predator,” the question of whether the State must reimburse turns on whether or not the Legislature is the source of that definition. Before Proposition 83, it was. After Proposition 83, the voters are the source of the expanded 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

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.

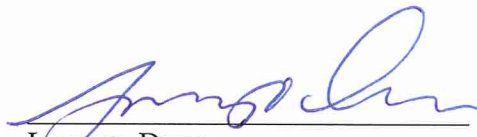
On March 26, 2019, I served the:

- **Finance's Late Comments on the Mandate Redetermination on Remand filed March 26, 2019**

Reconsideration of the Request for Mandate Redetermination on Remand
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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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Mailing List

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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