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

RE: Opposition to 12-4509-MR-01 Sexually Violent Predators (CSM 4509)

Dear Commission Members:

This letter is to express the strong opposition of the Sacramento District Attorney's Office and the County of Sacramento to the request from California Department of Finance (DOF) to conduct a new test claim to eliminate the mandate reimbursement for the activities required in Welfare and Institutions Codes §§ 6601 to 6608 regarding the civil commitment of Sexually Violent Predators (SVP).

A person can only be designated a sexually violent predator when he/she is a current inmate housed at the Department of Corrections and Rehabilitation, who is then found by initial screening to meet the definition of sexually violent predator by the CDCR Board of Prison Terms. Then, after fully reviewing the matter, the Director of the Department of Hospitals must state that the person has a mental illness and is a danger to the safety of the people of the state without the treatment provided by the Department of State Hospitals. Only when the Director makes this finding and recommendation can a civil commitment be processed at the local level.

The designation of a SVP thus begins with two California state agencies; it cannot begin in any other manner. No one on the local level can initiate the process to certify an inmate as a SVP mental patient. This was the law when passed by the legislature in 1996, and when amended by SB 1128 on September 20, 2006. This legislative scheme remained unchanged when certain sections of Welfare and Institutions Code §§ 6600 et seq. were part of the ballot language of Proposition 83, commonly known as Jessica's Law, passed by the voters in November 2006. The state has the duty and obligation to provide for the patients in its care, and to provide legal representation to those patients and to its own agencies. When that duty is voluntarily shifted to local government, California Constitution Article XIII B, § 6 provides that the state

must reimburse the local government for the cost of providing services for the State of California. The Commission on State Mandates agreed to the application of these principles to the SVP legislative scheme in their Statement of Decision No. CSM-4509 effective June 25, 1998.

The Department of Finance now requests the Commission adopt a new test claim by applying the provisions of Government Code § 17570(a)(2) and (b), which require there to have been a change in the law before a new test claim may be adopted. DOF's request is flawed in two respects. First, Government Code § 17570 requires an actual change in the law before the procedure to adopt a new test claim can be utilized by the Commission on Mandates. The fact that pre-existing law has simply been recited again, either in a statute re-enacted by the legislature, or as part of a new ballot measure, which make other substantive changes in the law, without having made any material change in the mandated activities, does not amount to a change in the law for § 17570 purposes.

Government Code § 17556(f) does provide that the state need not reimburse local government for activities mandated by a state initiative. In this situation, Proposition 83, or Jessica's Law, passed by the voters in November 2006, did include in its provisions some of the mandated activity provisions at issue. However, the mandated activities at issue here were in place before the initiative was enacted. The mandated activities have been in place since 1996, through at least three versions of the law: the sections that were adopted in 1996, and were the subject of CSM-4509; the provisions that remained in place when the legislature passed SB 1128, chaptered as urgency legislation on September 20, 2006; and the sections that were readopted in Proposition 83, by the voters, in November 2006. These three versions of the law are consistent as to the mandated activities in Welfare and Institutions Code §§ 6601, 6602, 6603, 6604, 6605, and 6608. Government Code § 17570 (a) (2) is clear that the definition of "Subsequent Change in the Law" is a change in the law that requires a finding that an incurred cost... is not a cost mandated by the state pursuant to § 17556. Thus, before Govt. Code § 17556 can be invoked there must be a change in the law. Here, there has been no change in the applicable law.

Second, the legislature still retains a true choice in whether to have the duties imposed on local government in the statute remain with local governments, or change the statutes so that the mandated duties are performed at the state level, rather than requiring the local government to bear the financial burden of housing and representing California mental patients, and representing the interests of California state agencies. Proposition 83, § 33 provides that the legislature has the authority to amend, by a statute passed by a roll call vote of two-thirds of each house. The State of California does not need the local District Attorney or Public Defender to represent its agencies and its patients in civil proceedings to implement the civil commitment proceedings currently in place. The State's Attorney General often represents the interests of individual State Agencies, and the State Public Defender often represents the interests of State inmates or patients in civil proceedings. 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

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chooses, and still fully implement the intent of the voters in Prop. 83 to contain sexual offenders and protect the public. The fact that the legislature has always had the ability (both before and after passage of Jessica's Law) to use state attorneys to prosecute and defend SVP litigation concerning inmates that the state have designated to be SVPs, rather than to have attorneys employed by the individual counties handle these cases, means the Constitution still requires those activities to be reimbursable. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (Citation omitted) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4<sup>th</sup> 1564, 1578 (emphasis in original).

The financial burden placed on the local government to perform these services for the state without reimbursement will create a hardship both now and in the future. The Department of Finance current request would provide a windfall of over \$20 million for the State of California that was never intended by the voters. Nor was such a financial effect anticipated by the Department of Finance and the Legislative Analyst's Office when they advised the Attorney General on the fiscal impact of Proposition 83. Clear evidence on this point can be found in the September 2, 2005 letter previously submitted to the Commission by others in opposition to the DOF application. The September 2, 2005 Department of Finance letter states with certainty that counties would be fully reimbursed for all of these costs after they had filed and processed claims with the state. The Attorney General did not inform the voters in the official fiscal summary in Proposition 83 that local costs would increase over 20 million dollars as costs for civil commitments of SVPs would no longer be reimbursed by the state. The voters relied on the fiscal summary presented to them in passing this measure.

There has been no change in the law. Proposition 83 did not affect any change in the mandated activities, and the fiscal analysis presented to voters at the time it was considered did not suggest there would be a \$20 million impact on local governments. I strongly urge that the Commission reject the application for a new test claim for CSM-4509.

Sincerely,



JAN SCULLY  
DISTRICT ATTORNEY

JS:gf