



WENDY L. WATANABE
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

RECEIVED
September 5, 2013
COMMISSION ON
STATE MANDATES

September 5, 2013

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

Dear Ms. Halsey:

**LOS ANGELES COUNTY'S COMMENTS ON COMMISSION ON STATE
MANDATES' DRAFT STAFF ANALYSIS AND STATEMENT OF DECISION FOR
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles respectfully submits its comments on the Commission on State Mandates' draft staff analysis issued on August 2, 2013 for the SVP's Redetermination Process, *Second Hearing: New Test Claim Decision*.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

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Attachment

**LOS ANGELES COUNTY'S COMMENTS ON COMMISSION ON STATE
MANDATES' DRAFT STAFF ANALYSIS AND STATEMENT OF DECISION FOR
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles ("the County, we, our") disagrees with the CSM's draft staff analysis and Statement of Decision ("SOD"), recommending that the Commission adopt a new test claim allowing reimbursement for only two of the eight activities mandated by the SVP Law: these are: 1) probable cause hearing, and 2) transportation of the SVP's to the probable cause hearing.

Our disagreements are based on the following: 1) Prop. 83 did not convert activities identified in the Commission's 1998 SOD to activities necessary to implement Prop. 83 and therefore, are no longer reimbursable, and 2) even if there was a change in the law, the new law should not be applied retroactively to pre Prop. 83 SVP's.

**Prop. 83 did not convert activities identified in the SVP Law
to "Necessary to implement" Prop. 83**

The CSM staff recommends CSM to adopt a new SOD, allowing reimbursement for following activities:

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 for each potential sexually violent predator to and from a secured facility only to the probable cause hearing on the issue of whether he or she is a sexually violent predator (Welf. & Inst. Code § 6602)

The remaining six activities, the CSM staff concludes, are either "**expressly**" included in the Prop. 83, or are "**necessary to implement**" Prop. 83.

We disagree. Activity 7 is necessary for performing Activity 4, and Activities 5 and 6 are not necessary for the implementation of 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, 6604.)

CSM staff argues that providing constitutional rights to SVPs is a necessary component to the implementation of Prop. 83 and is thus not reimbursable. Department of Finance also insists that this activity, which pertains exclusively to trials and subsequent hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop. 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms.

The need for the County to provide constitutional protections was the basis of the Commission's 1998 finding that State reimbursement was necessary and appropriate. As noted by the Commission, "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." (Statement of Decision, at p.11, Citing *Mason v. State of Arizona* (9th Cir.1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.app.3d 514). The Commission continued: "[L]ocal 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." Therefore, this activity should be reimbursable.

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

This activity concerns the need for prepared counsel to participate in SVP's trial and is analogous to the Commission's recognition of the mandate to reimburse services provided at probable cause hearings.

Proposition 83 did not amend the trial provisions of the prior SVP Act (Welf. & Inst. Code § 6603). The Commission staff contends that this activity is "necessary to implement" Proposition 83's amendment to Welf. & Inst. Code § 6604 which made commitments indeterminate. In other words, the staff implies that in order to have an indeterminate term for an SVP, a trial is needed.

A trial is not necessary to implement the indeterminate provisions of Proposition 83. SB1128 (which preceded Prop. 83) had already made SVP commitments indeterminate. In other words, a trial is not necessary to implement an indeterminate term under Prop. 83 because the law already required an indeterminate term.

In addition, a mandated service may not fairly be re-characterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law. Further, in some cases an individual may choose to admit his/her petition and thus not have a trial. So trials under 6603 are not necessarily "necessary" to implement Prop. 83 and therefore, this activity should be reimbursable.

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).)

Prop 83 did not affect the need for the prosecution and appointed defense counsel to prepare for and attend hearings regarding the condition of an SVP. Again, a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.

Prop. 83 law should be applied prospectively to Post Prop. 83 SVP's only

Under the SVP law, individuals were subject to a 2-year commitment. When SB1128 and Prop. 83 passed, the recommitment provisions of Welf. & Inst. Code § 6604 were deleted. Currently, under Prop. 83, there is no provision to recommit someone after the 2-year term. Thus recommitments are not mandated by Prop. 83. Reccommitments would thus be mandated under the SVP Law. SVP should not be applied to the pre Prop. 83 offenders until they leave the program.

Retroactive application of Prop. 83 (a violation of Ex Post facto Law) to pre Prop. 83 SVP's would be unconstitutional. In adopting new Parameters and Guidelines for Chapter 641, Statutes of 1995, CSM stated:

Chapter 641/95, eliminated diversion as a domestic violence sentencing for those arrested on or after January 1, 1996, under prior law, (Chapter 221/93, and Chapter 1158/80) was not terminated by chapter 641/95 and continues until the period of diversion has been completed. Such completion and resultant closeout costs, for the period January 1, 1996 through June 30, may be claimed as provided. CSM-4447A, Page 1

To eliminate the right of the pre Prop. 83 SVP's from the pre Prop. 83 (2006) applicable laws would be **nullifying the sentencing judges' orders**. Our interpretation of statutes declares all laws are to commence in the future and operate prospectively. Therefore, reimbursement should continue on all pre Prop. 83 SVP's in accordance with the SVP Law until jurisdiction is terminated.

Conclusion

Based on the foregoing analysis, the County respectfully urges the CSM to deny the CSM staff's recommendation for adopting a new SOD.