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RECEIVED
April 10, 2019
Commission on
State Mandates

LATE FILING

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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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]):

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:

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.

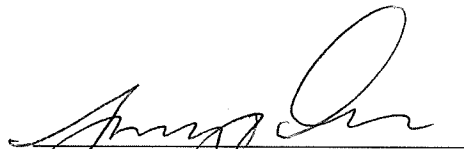
On April 11, 2019, I served the:

- **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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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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