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RECEIVED
April 10, 2019
Commission on
State Mandates

**Re: Comments Relating to the Reconsideration of the
Request for Mandate Redetermination on Remand,
12-MR-01-R, Pursuant to *County of San Diego, et al., v.
Commission on State Mandates, et al.* (2018) 6 Cal.5th 196**

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 County of Sacramento responds to the Commission's request for comments dated February 8, 2019. The Commission requested that all parties brief whether the expanded Sexually Violent Predator ("SVP") definition in Proposition 83 transformed the test claim 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. The Commission also requested that all parties comment on how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments. These questions, of course, arise from *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, where the Supreme Court found that the Commission's decision was incorrectly decided and directed the Commission to determine whether Proposition 83 might have had an effect on the mandate more broadly, as a result of the expanded definition of an SVP.

Proposition 83, known as Jessica's Law, was adopted by the voters in 2006. The Proposition expanded the definition of sexually violent predator by reducing the required number of victims from two or more to one or more. (Welf. & Inst. Code § 6600(a)(1).) The Proposition also eliminated a provision that had capped at one the number of juvenile adjudications that could be considered a prior qualifying conviction. (Welf. & Inst. Code § 6600(g).) The Department of Finance in their comments contends that the Proposition also expanded the set of crimes that qualify as a sexually violent offense. (Welf. &

Inst. Code § 6600(b).) But those changes were signed into law by the Governor on September 20, 2006 through Senate Bill 1128, not through Jessica's Law.

The issue of whether the expanded SVP definition transformed the statutes into a voter-imposed mandate was briefed extensively before the Commission in 2013, as well as in the trial court, Court of Appeal and Supreme Court. In short, the reimbursable activities have not changed since Jessica's Law was adopted by the voters. Proposition 83 made minor and immaterial amendments to two subdivisions in two of the Test Claim Statutes. As a result, article IV, section 9 of the California Constitution required that these statutes be reinstated in their entirety. (*American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748.) The constitutionally compelled reenactment of the unaltered Test Claim Statutes cannot be construed as a decision by the voters to impose duties that the ballot measure did not add or amend. For further discussion on this point, please see the Sacramento County District Attorney Comments dated and filed with the Commission on March 26, 2013, as well as the comments filed by the County of San Diego on March 27, 2013.

The primary issue now before the Commission is whether the expanded definition imposed new duties on the counties by increasing the number of referrals. Note that the Department of Finance in their March 22, 2019 comments failed to provide evidence as to this issue and has not met its initial burden of proof. In its February 8, 2019 request for comments, the Commission advised that the Commission's ultimate findings of fact must be supported by substantial evidence in the record.

Statistics clearly establish that since the passage of Jessica's Law, the number of referrals has actually decreased state-wide. The report published in July 2011 by the California State Auditor on the Sex Offender Commitment Program (Report 2010-116), shows that right after the passage of Jessica's Law, the number of evaluations by Mental Health increased but, despite the increased number of evaluations, Mental Health recommended to the district attorneys or county counsels responsible for handling SVP cases about the same number of offenders in 2009 as it did in 2005, before the voters passed Jessica's Law. (Audit Report, p. 15.) The number of referrals continued to decrease in 2010, the last year addressed by the Audit Report. In 2005, 46 designated counsel petitions were filed. That number increased to 88, 169 and 92 in 2006, 2007 and 2008 respectively, but then dropped off to 52 in 2009 and only 23 in 2010, only half the number of filings from 2005 before Jessica's Law was passed. (Audit Report, p. 14.) As the Audit Report found:


By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica's Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism. (*Id.*)

The Audit Report further concluded that “crimes added under Jessica’s Law as sexually violent offenses correlate less with the likelihood that offenders who commit such crimes are SVPs than do the crimes designated in the original Sexually Violent Predator Act.” (*Ibid.*)

Sacramento County’s statistics are similar to state-wide statistics. In 2005, pre-Jessica’s Law, there were four petitions filed, all with multiple victims. In 2007, post-Jessica’s Law, there were 12 petitions filed, all with multiple victims. In 2008, 18 petitions were filed, all with multiple victims. Since then, the total number of petitions filed has steadily dropped, and there have never been more than three single-victim petitions filed in a year. The District Attorney has located at least four referrals for which a petition was not filed, and several that were dismissed either prior to or shortly after the probable cause hearing. (See Declaration of Brian Morgan, attached hereto.) Regardless, the change in law did not increase the number of referrals to Sacramento County and in fact appears to have greatly reduced the number of referrals and certainly the number of petitions filed.

I declare under penalty of perjury that the foregoing, signed on April 10, 2019, is true and correct to the best of my personal knowledge, information or belief.

Sincerely,
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By: 
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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

I, Brian Morgan, declare as follows:

1. I am employed as a Supervising Deputy District Attorney for the Sacramento County District Attorney's Office, Mental Health Litigation Unit. I have personal knowledge of the matters stated herein, and if called as a witness could and would testify competently thereto.


2. At the request of the County Counsel's Office, I researched the District Attorney's files from 2005 to the present, to determine how many SVP filings our Office made for each year and of those filings, how many were multiple victim and how many were single victim. The research required pulling each individual file in an attempt to recreate the data, and thus is as accurate as the review of available records allowed. The numbers are presented in the chart below.

YEAR FILED	More than 1 victim	Single victim
2005	4	0
2006	19	0
2007	12	0
2008	18	0
2009	5	2
2010	4	0
2011	5	2
2012	2	1
2013	7	1
2014	3	1
2015	4	1
2016	4	2
2017	3	1
2018	2	3
2019	0	1

3. I located at least four referrals where petitions were not filed, and several cases that were dismissed either prior to or shortly after the probable cause hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2019, in Sacramento, California.


Brian Morgan

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.

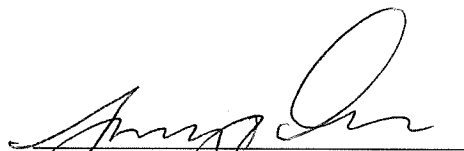
On April 11, 2019, I served the:

- **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

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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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