

Item 12

**PROPOSED STATEWIDE COST ESTIMATE**

**\$14,051,306**

**(Approximate Prospective Cost of \$7,026,000 Annually)**

Welfare and Institutions Code Section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);

Statutes 1996, Chapter 4 (AB 1496)

As Modified by:

Proposition 83, General Election, November 7, 2006

*Sexually Violent Predators*

CSM-4509

(amended by 05- PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Sections 6250 and  
6600 Through 6608, Chapter 762,  
Statutes of 1995, Chapter 763, Statutes  
of 1995, Chapter 4, Statutes of 1996

By the County of Los Angeles

NO. CSM - 4509

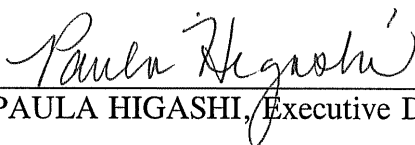
*Sexually Violent Predators*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT  
CODE SECTION 17500 ET SEQ.;  
TITLE 2, CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on June 25, 1998.

This Decision shall become effective on June 25, 1998.

  
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PAULA HIGASHI, Executive Director

## ITEM # 4

### PROPOSED STATEMENT OF DECISION

Welfare and Institutions Sections 6250 and 6600 through 6608

Chapter 762, Statutes of 1995

Chapter 763, Statutes of 1995

Chapter 4, Statutes of 1996

County of Los Angeles, Claimant

#### *Sexually Violent Predators*

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#### **Executive Summary**

On May 28, 1998, the Commission approved this test claim with a 7-0 vote.

The test claim legislation establishes *new* civil commitment procedures for the continued detention and treatment of sexually violent predators following completion of prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

The Commission found that the test claim legislation imposes a new program upon counties since the procedures to commit the sexually violent predator are civil, rather than criminal, and is not within the county's preexisting duty to prosecute crime.

The Commission also recognized that the 6th and 14th Amendments of the U.S. Constitution provide that an indigent accused has the right to counsel and expert services necessary to prepare the defense at public expense.

Nonetheless, the Commission found that the test claim legislation is mandated by the state. There is no federal statutory or regulatory scheme requiring the states to keep sexually violent predators confined. The Commission recognized that what sets the 6th and 14th Amendments in motion and causes the public defender to safeguard the rights of the indigent defendant, is the state's enactment of the sexually violent predator legislation. If the state had not created this program, inmates would be released following completion of their prison term, counties would not be compelled to initiate these proceedings and services from defense counsel and experts would not have to be provided to indigent inmates.

Accordingly, the Commission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Commission **approved** the test claim for reimbursement of the following activities:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i) .)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for **commitment** by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602 .)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604 .)
- 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, subs. (b) through (d), and 6608, subs. (a) through (d).)
- 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 and 6605, subd. (d) .)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602 .)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

### **Staff Recommendation**

Based on the foregoing, staff **recommends** that the Commission approve the attached Proposed Statement of Decision which accurately reflects the Commission's decision to approve this test claim.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code Sections 6250 and 6600 through 6608 as added by Chapter 762, Statutes of 1995, Chapter 763, Statutes of 1995, and Chapter 4, Statutes of 1996

And filed on May 30, 1996;

By the County of Los Angeles, Claimant.

NO. CSM - 4509

*SEXUALLY VIOLENT PREDATORS*

PROPOSED STATEMENT OF  
DECISION PURSUANT TO  
GOVERNMENT CODE SECTION  
17500 ET SEQ.; TITLE 2,  
CALIFORNIA CODE OF  
REGULATIONS, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

(Presented for adoption on  
June 25, 1998)

**PROPOSED STATEMENT OF DECISION**

The Commission on State Mandates (Commission) on May 28, 1998 heard this test claim, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Ms. Marsha A. Bedwell, Deputy Attorney General, represented the Department of Finance, and Mr. James Apps appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Mr. Robert Kalunian, Mr. John Vacca, Mr. Kent Cahill, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 7 to 0, approved this test claim.

## BACKGROUND

In 1995, the Legislature established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses through the enactment of Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996.

Section 1 of Chapter 763, Statutes of 1995, reveals the intent of the test claim legislation as follows:

“The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and *not for any punitive purposes.*” (Emphasis added .)

A sexually violent predator is defined as (1) a person who has been convicted of a sexually violent offense against two or more victims, (2) who has received a determinate sentence for the offense, and (3) who has a diagnosed mental disorder that makes the person a danger to others in that it is likely he or she will engage in sexually violent criminal behavior. (Welf. & Inst., Code § 6600.)<sup>1</sup>

Section 6601, subdivisions (a) through (h) <sup>2</sup>, establishes the process by which the state (through the Department of Corrections, the Board of Prison Terms, and the Department of Mental Health) screens individuals in custody at least six months prior to release for a sex-related offense and determines whether such individuals are sexually violent predators. If the state determines that such individuals are potential sexually violent predators during the screening process, the state may petition the appropriate county for **commitment**.

Section 6601, subdivision (h), provides the following:

“(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this

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<sup>1</sup> After this test claim was filed, Article 4 of the Welfare and Institutions Code was amended by Chapters 461 and 462, Statutes of 1996. These chapters expanded the class of potential sexually violent predators by including those persons who (1) were found not guilty by reason of insanity for a sexually violent offense, (2) were convicted of a sexually violent offense in another state even if a determinate sentence was not imposed, and (3) were convicted of a sexually violent offense against a victim under the age of 14 and the offending act involved substantial sexual conduct, as specified. (Welf. & Inst. Code, §§ 6600, subd. (a), and 6600.1.) Chapters 461 and 462 are *not* included in the test claim. Accordingly, reimbursement is not required for the class of persons identified above. (However, if the claimant amends this test claim, or files a new test claim on these chapters, on or before December 31, 1998, then the eligible reimbursement period for Chapters 461 and 462 would commence on July 1, 1997. (Gov. Code, § 17557, subd. (c).)

<sup>2</sup> Unless otherwise noted, all references are to the Welfare and Institutions Code.

article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the *attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.*”<sup>3</sup> (Emphasis added.)

Once the state requests that a petition be filed, either the district attorney or the county counsel (as designated by the county Board of Supervisors) reviews the records and reports forwarded by the state to determine if they concur with the state’s recommendation. If the county’s designated counsel concurs that the person is a sexually violent predator, the county’s designated counsel *must* file a petition for commitment in the superior court. Section 6601, subdivision (i) , specifically provides :

“(i) if the *county’s designated counsel* concurs with the recommendation, a petition for **commitment** *shall* be filed in the superior court of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The petition shall be filed, and either the district attorney or the county counsel of that county shall handle the proceedings. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article. ” (Emphasis added.)

Once a petition for **commitment** is filed with the superior court, the court reviews the petition to determine if probable cause exists that the inmate is likely to engage in sexually violent predatory behavior upon release. Pursuant to section 6602, a probable cause hearing is conducted and the inmate “*shall be entitled to the assistance **of counsel***” during the hearing. If the court finds that there is probable cause, the inmate *shall* remain in custody in a secured facility until a trial is completed. At trial, the trier of fact (either the court or a jury, if requested) shall determine whether the person, by reason of a diagnosed mental disorder, is likely to engage in acts of sexual violence upon release.

Section 6603 provides that the inmate is entitled to a trial by jury, the assistance of counsel, and the right to retain experts or professionals to perform an examination on his or her behalf. Section 6603 specifically provides :

“(a) A person subject to this article *shall be entitled to a trial by jury, the assistance **of counsel**, the right to retain experts or professional persons to perform an examination on his or her behalf and have access to all relevant medical and psychological records and reports. In the case **of** a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person’s request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person’s behalf.*

“(b) The attorney petitioning for **commitment** under this article shall have the right to demand that the trial be before a jury.

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<sup>3</sup> Chapter 4, Statutes of 1996, made a minor amendment to section 6601, subdivision (h), by adding the words “in the superior court” at the end of the subdivision.

“(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

“(d) A unanimous verdict shall be required in any jury trial. ” (Emphasis added.)

If the court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator, the person is committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secured facility. (Welf. & Inst. Code, § 6604.) The two-year civil commitment is subject to an annual review by the state and extension of the commitment if the mental disorder and danger to the community continue. (Welf. & Inst. Code, § 6605 .)

With each yearly review, the committed person also has a right to petition the court for conditional release. (Welf. & Inst. Code, § 6605, subd. (b) .) If the committed person affirmatively waives the right to petition the court for conditional release, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the committed person does not affirmatively waive this right, the court “*shall set a show cause hearing to determine whether facts exist to warrant a hearing on whether the person’s condition has changed.*” *The inmate has the right to be present and to have an attorney present at the show cause hearing.*

If the court determines at the show cause hearing that the inmate’s mental condition has changed and that he or she is no longer a danger, the court *shall set a hearing on that issue.* (Welf. & Inst. Code, § 6605, subd. (c) .) At this subsequent hearing, the inmate “*has a right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding.*” (Welf. & Inst. Code, § 6605, subd.(d).)

Section 6605, subdivision (d) further provides that:

“ . . . *The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person’s diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.* ” (Emphasis added.)

If the court or jury decides against the committed person at the hearing, the term of commitment of the person runs for an additional period of two years from the date of the ruling. If the court or jury decides in favor of the committed person (i.e, that the committed person no longer presents a danger to society), the committed person is unconditionally released. (Welf. & Inst. Code, § 6605, subd. (e).)



In addition, the sexually violent predator can be released, either unconditionally or on an outpatient basis, with the following procedures:

- At any time, the State Department of Mental Health can seek *judicial review pursuant to the habeas corpus procedure* if the state believes the committed person is no longer a sexually violent predator. (Welf. & Inst. Code, § 6605, subd. (f).)
- The State Department of Mental Health can file a report and recommendation for conditional release if the facts suggest that the committed person is not likely to commit acts of predatory sexual violence while under the supervision and treatment in the community. (Welf. & Inst. Code, § 6607 .) If the court accepts the recommendation from the Department of Mental Health, a *hearing* is held pursuant to section 6608, subdivision (b), (c) and (d), to determine if the person would be a danger if released to the community under supervision. *Notice of the hearing is given to the designated county counsel, the attorney who represented the inmate at the initial commitment proceeding, and the Department of Mental Health.* If the court determines that the committed person continues to pose a threat to others, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the court determines that the committed person no longer poses a threat to the community, the committed person is placed in a state-operated conditional release program. At the end of the conditional release program, the court sets a hearing to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g).)
- After one year of commitment, the sexually violent predator may petition the court directly for conditional outpatient release. The court may dismiss the petition if it determines the petition is without merit. If the petition is not frivolous, the *court shall set a hearing, with notice to the designated county counsel, defense attorney and Department of Mental Health.* (Welf. & Inst. Code, § 6608, subs. (a) and (b).) If the court determines that the committed person remains a threat to others, the committed person remains in custody until the end of the two-year commitment. If, on the other hand, the court determines that the committed person no longer poses a threat to the community, the court places the committed person in a state-operated conditional release program for one year. Thereafter, another hearing is set by the court to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g) .)

The test claim legislation is similar to the Mentally Disordered Sex Offenders (MDSO) legislation. (Stats. 1977, ch. 164.) Both programs provide for the civil commitment of persons determined to be a MDSO or sexually violent predator to a state mental facility.

The Legislature appropriated funds to reimburse local governments for the costs associated with the MDSO program. However, in 1981, Chapter 928 repealed the MDSO portion of the statute prospectively (Welf. & Inst. Code, § 63 16.2), and provided that persons committed under section 63 16.2 would remain governed by this section until their commitments are terminated. Thus, counties continue to be reimbursed for the MDSO program.

Under former section 6316.2, a person who *suffers from a mental disease, defect, or disorder, and as result of such mental disease, defect, or disorder, is predisposed to the commission of sexual offenses to such a degree that he or she presents a substantial danger of bodily harm to*

others, may be civilly committed to a state mental facility. The statute further specifies that a patient (alleged MDSO) is entitled to the rights guaranteed under the state and federal Constitutions for criminal proceedings. These rights include the right to counsel, defense witnesses, and examinations.

Reimbursement is still provided for costs of transportation, care and custody of the patient (MDSO), trial costs, juror fees, and prosecuting district attorneys' costs if consent is given by the Attorney General for the district attorney to represent the state in proceedings under former section 63 16 .2. It should also be noted that the State Public Defender may contract with county public defenders to provide indigent legal defense. (Gov. Code, § 15402 .)

## COMMISSION FINDINGS

**Issue 1:** Does the sexually violent predator legislation enacted by Chapters 762 and 763 of Statutes of 1995, and Chapter 4 of Statutes of 1996, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?<sup>4</sup>

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.<sup>5</sup>

As indicated above, the test claim legislation requires a series of activities for the civil commitment of potential sexually violent predators following completion of their criminal sentence. These activities are described below.

### Activities Performed by Counties

The Commission found that the test claim legislation obligates counties to complete the following activities for the civil commitment of sexually violent predators:

- Designate counsel to handle sexually violent predator cases referred by the state. (Welf. & Inst. Code, § 6601, subd. (i).)

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<sup>4</sup> Section 6, article XIII B states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. "

<sup>5</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

- Review cases referred by the state to determine if county counsel concurs with the state's recommendation to proceed with civil commitment procedures. (Welf. & Inst. Code, § 6601, subd. (i).<sup>6</sup>)
- File petitions for civil commitment with the superior court. (Welf. & Inst. Code, § 6601, subd. (i) .)
- Represent the State of California and the indigent inmate in the civil commitment probable cause hearing, trial and all subsequent hearings and reviews. (Welf. & Inst. Code, §§ 6601, subd. (i), 6602, 6603, 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
- Provide the indigent inmate with necessary experts and investigation to prepare the defense for trial and subsequent hearings. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transport and house the inmate during the civil commitment proceedings. (Welf. & Inst. Code, § 6602.)

The Commission recognized that the activities listed above are performed by counties who carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally. Therefore, the first requirement necessary to determine whether the Legislature has imposed a reimbursable state mandated program is satisfied.

Moreover, the Commission found that the provisions of the test claim legislation impose new requirements, not previously imposed, upon the counties to implement civil commitment procedures for sexually violent predators following the completion of a criminal sentence. Although the MDSO program imposed similar activities upon counties, that program was repealed before the sexually violent predator legislation was enacted. Additionally, the procedure is civil, rather than criminal. Therefore, the test claim legislation imposes duties on counties that are not within their preexisting duty to prosecute crime relating to sexually violent predators.<sup>7</sup>

Accordingly, the Commission found that the test claim legislation constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

However, the Commission continued its analysis to determine whether the sexually violent predator legislation is state mandated, or merely implements a federal law. Since the finding

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<sup>6</sup> Section 6601, subdivision (i), provides that “if the county’s designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court. ..”. Despite the use of the word “if” in the statute, the Commission found that the designated county attorney does not have discretion to file a petition for civil commitment. Rather, the county’s attorney simply determines if he or she agrees with the state’s recommendation based on the file and records of the inmate. If there is agreement, the county has no choice but to proceed with the filing of the petition. Accordingly, the Commission found this requirement mandatory.

<sup>7</sup> The Commission noted that the sexually violent predator legislation is *not* subject to the “crimes and infractions” exception to reimbursement under Government Code section 17556, subdivision (g). The US. Supreme Court held that similar sexually violent predator legislation in Kansas did not establish “criminal” proceedings and the involuntary confinement under the legislation was not punitive. (*Hendricks v. Kansas* (1997) 117 S.Ct. 2072.)

that the inmate is a sexually violent predator results in commitment of the person to the custody of the Department of Mental Health and confinement in a locked facility, the 6th Amendment (right to counsel) and 14th Amendment (due process clause) of the U.S. Constitution are implicated.

**Issue 2:** Is the sexually violent predator legislation state mandated?

The U.S. Supreme Court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. (*Addington v. Texas* (1979) 441 U.S. 418, 425, 99 S.Ct. 1804, 1809.) Accordingly, the Commission recognized that the test claim legislation implicates federal due process concerns requiring consideration of due process procedures, including the right to counsel, before one is deprived of liberty.

The Department of Finance asserted that the indigent defense provisions of the test claim legislation merely implements federal law through the 6th and 14th Amendments to the U.S. Constitution and do not impose a reimbursable state mandated program. The Department contended that although they have found no definitive United States Supreme Court authority regarding a right to counsel in civil commitment proceedings, California courts have recognized that legal services for indigent persons at public expense are mandated in mental health matters where a restraint of liberty is possible. Furthermore, where there is a right to counsel, ancillary services, such as experts and investigative services are also provided. The Department stated: “It appears that the requirements of federal due process and equal protection require that indigents subject to the sexually violent predator proceedings be provided counsel and ancillary services, and to that extent, these aspects of the statute are ‘required by federal law’.” (Citing *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816.)

The claimant, California Public Defenders Association, the County of Monterey, the City and County of San Francisco, the Alameda County Public Defender’s Office and the County of San Joaquin contended that federal law does not require the state to implement the civil commitment of sexually violent predators and, thus, a reimbursable state mandated program exists.

### **Right to Counsel, Experts and Investigative Services in Civil Commitment Proceedings**

The Commission found no United States Supreme Court authority specifically holding that a defendant in a civil commitment proceeding has the right to counsel. However, the United States Supreme Court has recently analyzed similar sexually violent predator legislation enacted in Kansas and recognized that an individual’s constitutionally protected interest in avoiding physical restraint may be overridden in the civil context provided the civil confinement takes place pursuant to “proper procedural and evidentiary standards.” (*Hendricks v. Kansas, supra*, 117 S.Ct. at 2079.)<sup>8</sup>

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<sup>8</sup> The Kansas Sexually Violent Predator Act established procedures for the civil commitment of persons who, due to a “mental abnormality” or a “personality disorder,” are likely to engage in predatory acts of sexual violence. Unlike the test claim legislation, the Kansas statute requires the state attorney general, rather than the local district attorney or county counsel, to initiate commitment procedures.

In addition, some federal courts have found that the assistance of counsel in civil proceedings is *required* to meet federal due process standards. The court in *Heyford v. Parker* (10th Cir. 1968) 396 F.2d 393, held that a civil proceeding resulting in involuntary incarceration for treatment commands observance of the constitutional safeguards of due process, including the right to counsel. (But see *Rud v. Dahl* (7th Cir. 1978) 578 F.2d 674, 678, which held that the Supreme Court has never specifically found that a civil proceeding requires the presence of the respondent as an element of due process.)

California courts have also recognized that legal services for indigent persons at public expense are *mandated* in civil proceedings relating to mental health matters where restraint of liberty is possible. (*Phillips v. Seely* (1974) 43 Cal.App.3d 104, 113; *Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835, 838.)

Finally, 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. (*Mason v. State of Arizona* (9th Cir. 1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.App.3d 514.)

Based on the foregoing authorities, the Commission found that the 6th Amendment right to counsel and the 14th Amendment due process clause of the U.S. Constitution require legal counsel, experts and investigative services be provided to indigent potential sexually violent predators throughout the civil commitment proceedings. Nevertheless, for the reasons stated below, the Commission determined that the test claim legislation represents a state mandated program.

### **Federal Law Does Not Require the Civil Confinement of Sexually Violent Predators**

The court addressed the issue of federal constitutional requirements under the 6th and 14th Amendments in relation to a test claim filed by the County of Los Angeles on Penal Code section 987.9 (CSM-4411) in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal. App. 4th 805. The test claim legislation in *County of Los Angeles* required counties to pay for investigators and experts in preparation of the defense for indigent defendants in death penalty cases.

The court in *County of Los Angeles* affirmed the Commission's decision to deny the test claim. The court held that Penal Code section 987.9 merely implemented the guarantees under the U.S. Constitution. The court further held that the statute did *not* impose any *new* requirements upon local governmental entities. Accordingly, the court found that counties are still compelled to provide defense services under the 6th and 14th Amendments to indigents facing the death penalty even in the absence of state law.

However, unlike the test claim legislation in *County of Los Angeles*, there is no federal statutory or regulatory scheme mandating the states to implement civil commitment proceedings for sexually violent offenders. Therefore, the Commission recognized that local 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.

Accordingly, the Commission found that the test claim legislation constitutes a state mandated program.

## CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Commission **approved** the test claim for reimbursement of the following activities:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil **commitment** proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for **commitment** by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604 .)
- 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 6608, subds. (a) through (d).)
- 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 and 6605, subd. (d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE AMENDED PARAMETERS AND GUIDELINES:

Welfare and Institutions Code section 6602;  
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496);  
*Sexually Violent Predators* (CSM-4509), As Modified by:  
Proposition 83, General Election, November 7, 2006  
Period of reimbursement begins on July 1, 2011.

Case No.: CSM-4509 (12-MR-01)

*Sexually Violent Predators*

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted May 30, 2014)

(Served June 3, 2014)

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines amendment during a regularly scheduled hearing on May 30, 2014. Timothy Barry appeared on behalf of the San Diego County Counsel’s Office, the San Diego Public Defender’s Office, and the San Diego County Sherriff; and Edward Jewik appeared on behalf of the County of Los Angeles. Lee Scott and Michael Byrne appeared on behalf of the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the amended parameters and guidelines and statement of decision by a vote of seven to zero.

**I. SUMMARY OF THE MANDATE**

These amended parameters and guidelines pertain to the *Sexually Violent Predators* test claim, CSM-4509, as modified by the Commission’s new test claim decision adopted December 6, 2013, pursuant to a redetermination request (12-MR-02) filed by the Department of Finance (Finance). Based on the filing date of the redetermination request, the period of reimbursement for these amended parameters and guidelines begins on July 1, 2011.<sup>1</sup>

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, established civil commitment procedures for the continued detention and treatment of sexually violent offenders following

<sup>1</sup> Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

their completion of a prison term for certain sex offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the inmate is a sexually violent predator, as defined in the statutes. If the inmate accused of being a sexually violent predator is indigent, the test claim statutes require counties to provide the indigent with assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.<sup>2</sup>

The new test claim decision, adopted December 6, 2013, provides continuing reimbursement only for preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing, and for transportation between a courthouse and a secure facility for purposes of the probable cause hearing.<sup>3</sup> The Commission, pursuant to the redetermination decision authorized by Government Code section 17570, found that both of these activities were imposed by the Legislature, but that all other activities previously approved were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f).<sup>4</sup>

## **II. PROCEDURAL HISTORY**

On June 25, 1998, the Commission adopted a test claim statement of decision approving reimbursement for certain activities of the Sexually Violent Predators program.<sup>5</sup> On September 24, 1998, the Commission adopted parameters and guidelines.<sup>6</sup> On October 30, 2009, the parameters and guidelines were amended pursuant to a boilerplate language amendment request brought by the State Controller's Office.<sup>7</sup>

On January 15, 2013, Finance filed a request for redetermination of the Sexually Violent Predators mandate, CSM-4509.<sup>8</sup> On December 6, 2013, the Commission adopted a new test claim decision to reflect the state's modified liability.<sup>9</sup> On December 13, 2013, Commission staff issued a draft expedited amendment to parameters and guidelines, in accordance with the Commission's new test claim decision.<sup>10</sup> On December 27, 2013, the County of San Diego

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<sup>2</sup> Exhibit A, Test Claim Statement of Decision, adopted June 25, 1998, at p. 13.

<sup>3</sup> Exhibit E, New Test Claim Statement of Decision, at pp. 54-55.

<sup>4</sup> *Ibid.*

<sup>5</sup> Exhibit A, Test Claim Statement of Decision.

<sup>6</sup> Exhibit B, Parameters and Guidelines, adopted September 24, 1998, at pp. 3-5.

<sup>7</sup> Exhibit C, Amended Parameters and Guidelines, adopted October 30, 2009.

<sup>8</sup> Exhibit D, Redetermination Request, dated January 15, 2013.

<sup>9</sup> Exhibit E, New Test Claim Statement of Decision.

<sup>10</sup> Exhibit F, Draft Expedited Amendment to Parameters and Guidelines.



submitted written comments on the draft expedited amendment to parameters and guidelines.<sup>11</sup> On January 2, 2014, the State Controller’s Office submitted written comments on the draft expedited amendment to parameters and guidelines.<sup>12</sup>

At the March 28, 2014 Commission hearing on these parameters and guidelines, representatives from the County of San Diego and the County of Los Angeles introduced oral evidence that they assert supports a finding that the housing of potential sexually violent predators pending the probable cause hearing is a reimbursable reasonably necessary activity. Since this was not analyzed in any detail in the proposed parameters and guidelines and statement of decision, staff recommended, and the Commission decided, that the decision on these parameters and guidelines should be continued to the following hearing, and a revised decision issued, reflecting the new information obtained at the hearing and any additional briefing or information submitted by parties and interested parties following the hearing.

Accordingly, on April 4, 2014, Commission staff issued a Request for Additional Briefing and Evidence on Costs Pertaining to Housing Potential Sexually Violent Predators.<sup>13</sup> On April 21, 2014, the transcript of the March 28, 2014 Commission hearing was received.<sup>14</sup> On April 25, 2014, the County of San Diego submitted additional comments in response to Commission staff’s request.<sup>15</sup> On April 28, 2014, the County of Los Angeles submitted late comments in response to Commission staff’s request.<sup>16</sup>

### **III. COMMISSION FINDINGS**

#### **A. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17570(f) provides that redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.<sup>17</sup> Based on the January 15, 2013 filing date,<sup>18</sup> eligibility for reimbursement or loss of reimbursement under the new test claim decision adopted pursuant to that request is established beginning July 1, 2011.

#### **B. Reimbursable Activities (Section IV. of Parameters and Guidelines)**

The new test claim decision adopted by the Commission on redetermination states that only the following two activities remain eligible for reimbursement:

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<sup>11</sup> Exhibit G, County of San Diego Comments.

<sup>12</sup> Exhibit H, Controller’s Comments.

<sup>13</sup> Exhibit J, Commission Request for Additional Briefing.

<sup>14</sup> Exhibit K, Transcript of Commission Hearing, March 28, 2014. Note that this transcript will not be reviewed or adopted by the Commission until the May 30, 2014 Commission meeting.

<sup>15</sup> Exhibit L, County of San Diego Response to Commission Request.

<sup>16</sup> Exhibit M, County of Los Angeles Response to Commission Request.

<sup>17</sup> Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

<sup>18</sup> Exhibit D, Redetermination Request.

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- 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.)

*This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial.*<sup>19</sup>

The test claim decision further states that “the following activities *do not constitute* reimbursable state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(f), beginning July 1, 2011:”Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)<sup>20</sup>

These findings were based on the Commission’s analysis in the new test claim decision<sup>21</sup> of transportation and housing activities approved in the original test claim decision.<sup>22</sup> The Commission found that the purpose and intent of Proposition 83 is “to protect the public from dangerous felony offenders with mental disorders and to provide mental health treatment for their disorders.”<sup>23</sup> The proper operation of the SVP program requires that “persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.” Therefore, “there is ample reason to hold individuals awaiting trial, rather than releasing those individuals to parole.” However, the Commission further found that “holding a probable cause hearing for each alleged SVP is a *requirement mandated by the Legislature*, and not necessary to implement Proposition 83,” and therefore “transportation to and from the court for a *state-mandated probable cause hearing* is not necessary to implement the ballot measure approved by the voters, and must remain a reimbursable state-mandated cost.” The Commission did not expressly address whether housing pending a *probable cause hearing* was severable from housing pending *trial*, but expressly denied housing pending trial, as shown above.<sup>24</sup>

Draft expedited amended parameters and guidelines were subsequently issued for comment, which identified the two activities for reimbursement and further stated that housing costs pending the probable cause hearing and trial were not reimbursable, as follows:

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<sup>19</sup> Exhibit E, New Test Claim Decision, at p. 57.

<sup>20</sup> Exhibit E, New Test Claim Decision, at p. 57.

<sup>21</sup> Exhibit E, New Test Claim Decision, at p. 39.

<sup>22</sup> Exhibit A, Test Claim Decision.

<sup>23</sup> *People v. McKee* (2010) 47 Cal.4th 1172, at p. 1203.

<sup>24</sup> Exhibit E, New Test Claim Decision, at p. 39.

- a. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  - a. Secretarial, paralegal and investigator services;
  - b. Copying and making long distance telephone calls; and
  - c. Travel.
- b. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.
 

*This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.*<sup>25</sup>

In comments submitted on the draft expedited amended parameters and guidelines, the County of San Diego urged the Commission to consider additional “reasonably necessary” activities related to the two activities identified above. Specifically, the County asserted that preparation for a probable cause hearing by indigent defense counsel also requires the “retention of qualified experts, investigators and professionals,” and that costs related to housing potential sexually violent predators pending a probable cause hearing should continue to be reimbursable.<sup>26</sup> In addition, the County of Los Angeles entered testimony at the March 28, 2014 hearing, and both the County of Los Angeles and the County of San Diego submitted additional comments in response to the Commission’s request for comment, in which the counties seek to show that housing pending or during the state-mandated probable cause hearing is reasonably necessary to implement the state mandated program and continues to be reimbursable.

Government Code section 17557 provides that “[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>27</sup> The Commission’s regulations provide that parameters and guidelines shall include “a description of the most reasonable methods of complying with the mandate.” “‘The most reasonable methods of complying with the mandate’ are those methods

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<sup>25</sup> Exhibit F, Draft Expedited Parameters and Guidelines Amendment, at pp. 6-7.

<sup>26</sup> Exhibit G, County of San Diego Comments, at pp. 2-3.

<sup>27</sup> Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

not specified in statute or executive order that are necessary to carry out the mandated program.”<sup>28</sup>

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.<sup>29</sup> Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;<sup>30</sup> and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>31</sup> The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”<sup>32</sup> Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if they are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”<sup>33</sup>

The Commission’s regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be “the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice “in the manner and of such information as is described in Government Code section 11515.”<sup>34</sup> Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

**1) Activities and costs related to housing potential sexually violent predators pending trial are expressly denied in the test claim decision, but activities and costs related to housing potential sexually violent predators pending a probable cause hearing are reasonably necessary to comply with the mandate and remain reimbursable.**

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<sup>28</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>29</sup> Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

<sup>30</sup> *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5<sup>th</sup> Dist. 1998) 202 Cal.App.3d 791, at p. 805.

<sup>31</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4<sup>th</sup> 330, 335.

<sup>32</sup> *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

<sup>33</sup> *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

<sup>34</sup> Code of Regulations, title 2, section 1187.5.

In the new test claim decision, the Commission found that costs to house a potential sexually violent predator at a secure facility *pending trial* were not reimbursable, because the “purpose and intent of Proposition 83 is to protect the public from dangerous felony offenders...” and the proper operation of the program “requires therefore that persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate.”<sup>35</sup> Therefore, the Commission found that holding potential sexually violent predators in custody *pending trial* was an essential function of the program as enacted by the voters, and thus the attendant housing costs are no longer reimbursable pursuant to Government Code section 17556(f). However, the Commission also found that conducting a probable cause hearing was not necessary to implement the voter-enacted ballot measure (Proposition 83), and therefore costs relating to a probable cause hearing were mandated by the state and remained reimbursable on an ongoing basis.

Accordingly, the central issue for determining whether the costs of housing pending and during a potential SVP’s state-mandated probable cause hearing are necessary to carry out the mandated program<sup>36</sup> is whether such costs are severable from housing costs pending and during that person’s non-reimbursable SVP trial. The Counties of San Diego and Los Angeles assert that housing costs pending and during an SVP probable cause hearing *are* severable, for purposes of mandate reimbursement, from housing costs pending and during an SVP trial and are necessary for the state-mandated probable cause hearing.<sup>37</sup>

The County of San Diego, in its comments on the draft expedited parameters and guidelines, argues that costs related to housing each potential sexually violent predator during the probable cause hearing should continue to be reimbursable. The County states that “inmates that are the subject of the SVP proceedings are housed by the California Department of Corrections and Rehabilitation at facilities throughout the state as far east as Calipatria and as far north as Coalinga.” When an inmate is brought back to San Diego the County for trial on the issue of whether he or she is a sexually violent predator, the inmate is “generally brought to the San Diego Central Jail, processed and then transferred to and housed at the George Bailey Detention Facility in Otay Mesa.”<sup>38</sup> The County asserts that its “Sheriff is responsible for housing these inmates for the duration of their stay in San Diego County, which often lasts several months.”<sup>39</sup>

On April 25, 2014, the County of San Diego filed additional comments and further clarified and explained these assertions, by submitting a new declaration from a member of the San Diego County Public Defender’s Office. The declaration of Mr. Michael Ruiz states that “[g]enerally, the alleged SVP is returned to Coalinga State Hospital after the probable cause determination, but often there are occasions when the alleged SVP will remain in the custody of the Sheriff,

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<sup>35</sup> Exhibit E, New Test Claim Statement of Decision, at p. 37.

<sup>36</sup> Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

<sup>37</sup> See Exhibit K, Transcript of Commission Hearing, March 28, 2014.

<sup>38</sup> Exhibit G, County of San Diego Comments, at p. 3.

<sup>39</sup> Exhibit G, County of San Diego Comments, at p. 9.

pending trial.” The declaration further asserts that “[a]s a result of the provisions of [Welfare and Institutions] Code section 6602 requiring a probable cause hearing, alleged SVPs are either required to be transported and housed by the Sheriff two different times, once for the Probable Cause hearing and once for the actual trial, or the alleged SVP remains in the custody of the Sheriff for an extended period of time that would not have been necessary but for the probable cause hearing requirement.”<sup>40</sup> San Diego thus concludes that “[h]ousing inmates for their probable cause hearings is a vital and necessary component to carrying out the balance of the mandated activities...and should continue to be reimbursable.”

The County of Los Angeles also filed a declaration from its Public Defender’s Office, on April 28, 2014. The declaration of Mr. Craig Osaki states directly as follows:

4. I presented arguments on behalf of the Los Angeles County Public Defender's Office at the March 28, 2014 Commission on State Mandates hearing regarding the proposed Parameters and Guidelines for the Sexually Violent Predator Program.
5. During the course of the Hearing, the Commission staff appeared to base its recommendation on the assumption that the potential S.V.P. is held in the local county jail from the time the person is transferred from state prison until he is committed to the State Hospital at trial.
6. This assumption is not correct in all cases.
7. Welfare and Institutions Code Section 6602.5(a) provides that “No person may be placed in a state hospital pursuant to the provisions of this article until there has been a probable cause determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.”
8. Further, Welfare and Institutions Code Section 6600.05(a) states that “Coalinga State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article ...”
9. Also, in the case of *People v. Ciancio* (2003) 109 Cal.App.4th 175, the Court construed Section 6602.5 to permit an alleged SVP to be placed in the State Hospital after the probable cause hearing determination.
10. In Los Angeles County, the general practice of the Court is to transfer the alleged SVP to Coalinga State Hospital after the probable cause determination (pursuant to Welfare and Institutions Code Section 6602.5 and the *Ciancio* decision.) Rarely does an individual remain in County jail until trial.
11. When the parties are ready for trial, the alleged SVP is ordered back to Los Angeles County Jail from Coalinga State Hospital. He is housed there temporarily while the trial proceedings commence.

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<sup>40</sup> Exhibit L, County of San Diego Response to Commission Request for Additional Briefing, at pp. 5-6.

Based on the plain language of the Welfare and Institutions Code section 6601 as pled in the original test claim, the SVP process is required to be initiated “at least six months prior” to an individual’s scheduled date of release from prison.<sup>41</sup> The individual is then screened by the Department of Corrections and Rehabilitation, and evaluated by the Department of Mental Health (DMH). If DMH determines that the person is a sexually violent predator, as defined, the director of DMH shall forward a request to the designated county counsel. If the county counsel concurs with the recommendation, he or she shall file a petition with the superior court in the county in which the person was convicted.<sup>42</sup> Then, “[p]ursuant to section 6601.5...the court must review the petition to determine whether, on its face, it contains sufficient facts that, if true, would support a finding of probable cause...” If a judge determines that the petition is sufficient on its face, “the judge shall order that the person be detained in a secure facility until a [probable cause] hearing can be completed pursuant to Section 6602.”<sup>43</sup> That probable cause hearing, pursuant to section 6601.5, “shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.”<sup>44</sup> Based on the evidence submitted by the County of Los Angeles and the County of San Diego, and certain examples from relevant case law,<sup>45</sup> often the state-mandated probable cause hearing is not conducted within ten days from the date of the court’s order of detention. The County of San Diego states that the average period in custody prior to a potential SVP’s probable cause hearing is 120 days.<sup>46</sup> After the probable cause hearing, the counties indicate that a potential SVP, if not released or paroled, is transferred back to state custody while awaiting trial,<sup>47</sup> and “[r]arely does an individual remain in County jail until trial.”<sup>48</sup> This is consistent with the court’s interpretation of section 6602.5 in *People v. Ciancio*, which provides authority for a trial court to order a potential SVP to be transferred to a state hospital for treatment after a probable cause hearing,<sup>49</sup> and with the plain language of section 6600.05, which requires that Coalinga State Hospital be used whenever a person is committed to a secure facility for mental health treatment.<sup>50</sup>

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<sup>41</sup> Welfare and Institutions Code section 6601 (as amended, Stats. 1996, ch. 4 (AB 1496)).

<sup>42</sup> *Ibid.*

<sup>43</sup> *People v. Ciancio* (2003) 109 Cal.App.4th 175, at p. 184 [citing and quoting Welfare and Institutions Code section 6601.5].

<sup>44</sup> Welfare and Institutions Code section 6601.5 (as amended, Stats. 2000, ch. 41 (SB 451)).

<sup>45</sup> See, e.g., *People v. Castillo* (2010) 49 Cal.4th 145.

<sup>46</sup> Exhibit L, County of San Diego Response to Commission Request for Additional Briefing, at pp. 5; 7.

<sup>47</sup> Exhibit L County of San Diego Response to Commission Request for Additional Briefing, at p. 7.

<sup>48</sup> Exhibit M, County of Los Angeles Response to Commission Request for Additional Briefing, at p. 3.

<sup>49</sup> (2003) 109 Cal.App.4th at p. 184.

<sup>50</sup> Welfare and Institutions Code section 6600.05 (as amended, Stats. 2012, ch. 24).

The above-described declarations, considered in light of the Commission’s previous findings with respect to this program, the plain language of the statutes, and the interpretations of the courts, constitute substantial evidence supporting reimbursement for housing costs related to state-mandated probable cause hearings. The weight of the evidence submitted, and the statutes and case law of which the Commission takes official notice, demonstrate that housing is required prior to the state-mandated probable cause hearing, and that the period of time that a potential SVP is housed pending and during the individual’s probable cause hearing is logically and legally distinct from the period of time that the person is housed pending trial. Welfare and Institutions Code section 6601.5 further provides that the requirement to house the potential SVP begins following the court’s order that the person be detained in a secure facility until a probable cause hearing can be completed pursuant to Section 6602. The evidence and case law also indicates that, in the usual case, an individual is either released (sometimes paroled) or transferred back to state custody for treatment after a probable cause hearing.<sup>51</sup> After the probable cause hearing, if the individual is being held, it is either pending trial or to complete their sentence and no further reimbursement is warranted, pursuant to Government Code section 17556(f).<sup>52</sup> No other contradictory evidence has been introduced, and therefore the Commission’s decision to amend the parameters and guidelines to include housing costs related to the state-mandated probable cause hearing is supported by substantial evidence.

Based on the foregoing, the Commission amends the parameters and guidelines as follows:

~~Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator.~~

- a. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation ~~and housing~~ costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of ~~housing and~~ transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial, and does not include housing potential sexually violent predators pending the probable cause hearing or trial.*

- b. Housing for each potential sexually violent predator from the time of the court’s order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

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<sup>51</sup> See Exhibit L, County of San Diego Response to Commission Request for Additional Information and Briefing, at p. 7; *People v. Ciancio* (2003) 109 Cal.App.4th 175, at p. 184.

<sup>52</sup> See Exhibit E, New Test Claim Decision, at p. 57.



Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).

**2) Activities and costs related to retention of necessary experts, investigators, and professionals for preparation for a probable cause hearing are reasonably necessary to comply with the mandate and should remain reimbursable.**

In addition to the costs of housing inmates pending probable cause hearings, the County urges the Commission to consider providing reimbursement in the parameters and guidelines for “costs the county’s designated counsel and indigent defense counsel incur for retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing.” The County asserts that “[e]ven though these costs are not expressly identified as reimbursable costs in the original test claim decision, these costs have been and should continue to be reimbursed to claimants by the state.” The County “requests that the [C]ommission specifically find that these costs continue to be reimbursable to local agencies pursuant to the SVP mandate,” because, the County asserts, “retention of qualified experts, investigators and professionals for probable cause hearings is critical to the prosecution and defense of individuals at the probable cause hearing.”<sup>53</sup>

The County submits the declaration of Mr. Michael Ruiz, a Deputy Public Defender for the County of San Diego. Mr. Ruiz states that “retention of necessary experts, investigators and professionals for purposes of preparing for a probable cause hearing can be critical to the defense of individual [sic].”<sup>54</sup> In addition, Mr. Ruiz states that “[t]he probable cause hearing is a critical stage of any SVP civil commitment proceeding, and that “SVP litigation is a high-end forensic practice... and the assistance of qualified professionals is critical to the preparation of these cases.”<sup>55</sup> Mr. Ruiz also states that “[a]t the probable cause stage of SVP proceedings, practitioners for both sides must be able to independently assess both the diagnostic and the relative risk conclusions reached by the designated DSH evaluators.”<sup>56</sup>

No evidence has been filed to rebut this declaration.

Therefore, based on the evidence in the record, the Commission finds the retention of necessary experts, investigators, and professionals, is reasonable necessary for the defense counsel to prepare for the probable cause hearing in accordance with Government Code section 17557 and section 1183.1(a)(4) of the Commission’s regulations. Thus, the activity of “Preparation and

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<sup>53</sup> Exhibit G, County of San Diego Comments, at p. 2.

<sup>54</sup> Exhibit G, County of San Diego Comments, at pp. 6-7.

<sup>55</sup> Exhibit G, County of San Diego Comments, at p. 7.

<sup>56</sup> Exhibit G, County of San Diego Comments, at p. 7.

attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing” is modified to include the retention of necessary experts, investigators, and professionals for preparation. However, the amended activity may not be interpreted to provide reimbursement for preparation for trial; the amended activity shall provide as follows:

1. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:

- a. Secretarial, paralegal and investigator services;
- b. Copying and making long distance telephone calls; and
- c. Travel.
- d. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

**B. CONCLUSION**

Based on the foregoing analysis, the Commission hereby adopts this statement of decision and attached proposed amendment to the parameters and guidelines.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE AMENDED PARAMETERS AND  
GUIDELINES:

Welfare and Institutions Code section 6602;  
Statutes 1995, Chapter 762 (SB 1143); Statutes  
1995, Chapter 763 (AB 888); Statutes 1996,  
Chapter 4 (AB 1496);

*Sexually Violent Predators* (CSM-4509), As  
Modified by:

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Period of reimbursement begins on July 1, 2011.

Case No.: CSM-4509 (12-MR-01)

*Sexually Violent Predators*

STATEMENT OF DECISION PURSUANT  
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REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

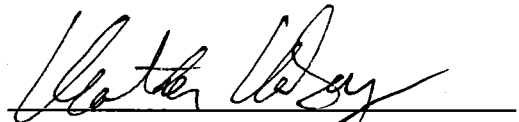
*(Adopted May 30, 2014)*

*(Served June 3, 2014)*

*(Corrected February 27, 2015)*

**CORRECTED PARAMETERS AND GUIDELINES AMENDMENT**

On May 30, 2014, the Commission on State Mandates (Commission) adopted the attached amended parameters and guidelines. Pursuant to California Code of Regulations, title 2, section 1187.11(b), clerical errors were corrected to remove language erroneously left in strike out and underline format under section IV. B. Reimbursable Activities and section VII. Offsetting Revenues and Reimbursements.



Heather Halsey, Executive Director

Corrected: February 27, 2015  
Amended: May 30, 2014  
Amended: October 30, 2009  
Adopted: September 24, 1998

## AMENDMENT TO PARAMETERS AND GUIDELINES

Welfare and Institutions Code Section 6602

Statutes 1995, Chapter 762

Statutes 1995, Chapter 763

Statutes 1996, Chapter 4

As Modified by:

Proposition 83, General Election, November 7, 2006

*Sexually Violent Predators*

CSM-4509

(amended by 05-PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011.

### I. Summary of the Mandate

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4 established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission on State Mandates (Commission) adopted a statement of decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601(i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601(i).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)

- 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(b) through (d), and 6608(a) through (d).)
- 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 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

On November 7, 2006, the voters approved Proposition 83, also known as Jessica’s Law, which amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the *Sexually Violent Predators*, CSM-4509 test claim.

On January 15, 2013, the Department of Finance filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570. A new test claim decision was adopted December 6, 2013, and these parameters and guidelines were amended, as follows, pursuant to that decision.

**II. Eligible Claimants**

Any county or city and county which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

**III. Period of Reimbursement**

Government Code section 17570(f) provides that a request for adoption of a new test claim decision (mandate redetermination) shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year. The request for mandate redetermination was filed on January 15, 2013, establishing eligibility for reimbursement or loss of reimbursement based on a new test claim decision on or after July 1, 2011.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. Reimbursable Activities**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities.

Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities only are eligible for reimbursement:

- A. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  1. Secretarial, paralegal and investigator services;
  2. Copying and making long distance telephone calls; and
  3. Travel.
  4. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

- B. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial.*

- C. Housing for each potential sexually violent predator from the time of the court's order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

*Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state facility housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).*

## **V. Claim Preparation and Submission**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### **2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### **3. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on

the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

#### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

### B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.



If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, Appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. Record Retention**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If the State Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. Offsetting Revenues and Reimbursements**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

### **VIII. State Controller's Claiming Instructions**

Pursuant to Government Code section 17558(b), the State Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the statements of decision on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

### **IX. Remedies Before the Commission**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the State Controller to modify the claiming instructions and the State Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

### **X. Legal and Factual Basis for the Parameters and Guidelines**

The statements of decision for the first and second hearings for the request for mandate redetermination and amendment to parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the amended parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 February 27, 2015, I served the:

**Corrected Parameters and Guidelines Amendment**

*Sexually Violent Predators*, CSM-4509 (12-MR-01)

Welfare and Institutions Code section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);

Statutes 1996, Chapter 4 (AB 1496)

As Modified by: Proposition 83, General Election, November 7, 2006

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 February 27, 2015 at Sacramento, California.



---

Heidi J. Palchik  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/19/15

**Claim Number:** CSM-4509 (12-MR-01)

**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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## COMMISSION ON STATE MANDATES

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February 27, 2015

Mr. Justyn Howard  
Department of Finance  
915 L Street  
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*And Interested Parties and Affected State Agencies (See Mailing List)*

**Re: Draft Proposed Statewide Cost Estimate, Schedule for Comments,  
and Notice of Hearing**  
*Sexually Violent Predators*, CSM-4509 (12-MR-01)  
Welfare and Institutions Code Sections 6602;  
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4

Dear Mr. Howard:

The draft proposed statewide cost estimate for the above-named matter is enclosed for your review and comment.

#### **Written Comments**

Written comments on this matter may be filed by **March 9, 2015**.

#### **Hearing**

This matter is set for hearing on **Friday, March 27, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed statewide cost estimate will be issued on or about March 10, 2015. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director



Item 12

**DRAFT PROPOSED STATEWIDE COST ESTIMATE**

**\$14,051,306**

**(Approximate Prospective Cost of \$7,026,000 Annually)**

Welfare and Institutions Code Section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);  
Statutes 1996, Chapter 4 (AB 1496)

As Modified by:

Proposition 83, General Election, November 7, 2006

*Sexually Violent Predators*

CSM-4509

(amended by 05- PGA-43, 12-MR-01)

This amendment is effective beginning July 1, 2011

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

Summary of the Mandate

Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4 require counties to provide indigents accused of being sexually violent predators the assistance of counsel and experts necessary to prepare the defense. On June 25, 1998, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim, approving reimbursement for preparation and attendance by the county's designated counsel at the probable cause hearing, trial, and further hearings; and related activities, including housing and transportation of potential sexually violent predator while awaiting trial.<sup>1</sup>

On December 6, 2013, the Commission adopted a new test claim decision pursuant to Government Code section 17570, and found that several of the activities previously found to be state-mandated were now required by an intervening voter-enacted ballot measure, and therefore no longer reimbursable pursuant to Government Code section 17556(f). The parameters and guidelines were amended to conform to the new test claim decision.<sup>2</sup> The only remaining reimbursable activities are preparation and attendance by the county's designated counsel and the indigent defense counsel at the probable cause hearing (and specified related reasonably necessary activities) and transportation between the designated secure facility and the courthouse

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<sup>1</sup> Exhibit A. Test Claim Statement of Decision, adopted June 25, 1998, at p. 13.

<sup>2</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015.

for purposes of the probable cause hearing, as described below under the *Reimbursable Activities* section.

### Recent Program Appropriations

Because this is not a new program, appropriations have already been made to fund it. Appropriations for mandated programs are made two years in arrears. The 2013-2014 Budget appropriated \$ 21,792,000 for payment of 2011-2012 claims. The 2014-15 Budget appropriated \$7,000,000 for 2012-13 claims, a figure which anticipated reduced program costs as a result of the new test claim decision. The proposed 2015-16 Budget includes an appropriation of \$7,140,000 for this program.

### **Eligible Claimants and Period of Reimbursement**

Any county or city and county which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17570(f) provides that a request for adoption of a new test claim decision (mandate redetermination) shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year. The request for mandate redetermination was filed on January 15, 2013, establishing eligibility for reimbursement or loss of reimbursement beginning July 1, 2011.

### **Reimbursement Claim Deadline**

Because the parameters and guidelines were amended with an effective date of July 1, 2011 on May 30, 2014, after timely reimbursement claims were required to be submitted for fiscal years 2011-2012 and 2012-2013 and late claims were required to be submitted for 2011-2012, reimbursement claims were already submitted for those years and included costs that are no longer reimbursable beginning July 1, 2011. Late claims may still have been filed for 2012-2013 until February 17, 2015. The SCO has revised the claiming instructions and claimants may file amended claims for those two prior fiscal years without penalty. If a claimant does not file an amended claim, the SCO will reduce the claim by the amount of non-reimbursable activities.<sup>3</sup> Amended claims for fiscal years 2011-2012 and 2012-2013 must be filed with the SCO by December 31, 2014 and late amended claims can be filed until December 31, 2015. Claims for fiscal year 2013-2014 must be filed with the SCO by February 17, 2015.<sup>4</sup>

### **Reimbursable Activities**

For each eligible claimant, the following activities only are eligible for reimbursement:

- A. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
  1. Secretarial, paralegal and investigator services;
  2. Copying and making long distance telephone calls; and
  3. Travel.

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<sup>3</sup> State Controller's Office State Mandated Costs Claiming Instructions No. 2014-10, Revised September 2, 2014.

<sup>4</sup> *Ibid.*

4. Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing ONLY.

*This activity does not include retention of experts, investigators, and professionals for preparation for trial on the issue of whether an individual is a sexually violent predator.*

- B. Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

*This activity does not include transportation for purposes other than the probable cause hearing or for potential sexually violent predators awaiting trial.*

- C. Housing for each potential sexually violent predator from the time of the court's order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.

*Housing costs are not reimbursable after the completion of the probable cause hearing, including the costs incurred pending trial on the issue of whether an individual is a sexually violent predator. Housing costs are not reimbursable if the secured facility is a state facility, except in those circumstances when the state has charged the county for the state facility housing costs. Housing costs for those potential sexually violent predators currently serving a criminal sentence are not reimbursable pursuant to Government Code 17556(g).*

### **Offsetting Revenues and Reimbursements**

The parameters and guidelines<sup>5</sup> provide:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

### **Statewide Cost Estimate**

34 counties submitted reimbursement claims for fiscal year 2011-2012, prior to the mandate redetermination and amendment of the parameters and guidelines, and five counties submitted amended claims for that year based on the amended parameters and guidelines and revised claiming instructions. For fiscal year 2012-2013, 30 counties submitted claims prior to the amendment of the parameters and guidelines and five counties submitted amended claims based on the amended parameters and guidelines and revised claiming instructions. Since the

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<sup>5</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015.

reimbursement claims which have not been amended were filed under the previous parameters and guidelines, they include activities that are no longer reimbursable.

"If a claimant does not file an amended claim, the SCO will reduce the claim by the amount of non-reimbursable activities. Claimants will receive an adjustment letter stating the amount reduced."<sup>6</sup> Specifically, the SCO is reducing the claims which were not amended by denying costs for all activities except for the two line items: "Preparation/Attendance at Probable Cause Hearing" and "Transportation and Housing Costs for Potential Sexually Violent Predators." The SCO has compiled the claims data for the 2011-2012 and 2012-2013 fiscal years, capturing the costs for these two activities for reimbursement purposes.<sup>7</sup> Staff has reviewed a sampling of the reimbursement claims and the data compiled by the SCO.<sup>8</sup> Based on this information, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

#### Assumptions

- *The actual amount deemed eligible for reimbursement may increase and exceed the statewide cost estimate.*

The three activities that are reimbursable under the amended parameters and guidelines are not defined in exactly the same way as any of the eight activities which were reimbursable under the prior parameters and guidelines. As a result, for claimants who did not submit revised reimbursement claims, the two activity line items allowed by the SCO may not contain all of the currently reimbursable activities for which claimant incurred and claimed costs in its reimbursement claims. For example, under the former claiming instructions, claimants could claim for "Retention of Court-Approved Experts/Investigators/Professionals" without regard to where they were at in the proceedings and there was a separate line for "Preparation/Attendance at Probable Cause Hearing." Therefore, while it is possible that some claimants may have included all of their 2011-2012 and 2012-2013 costs for preparation and attendance at probable cause hearings under "Preparation/Attendance at Probable Cause Hearing," it is likely that at least some claimants included their costs for "Secretarial, paralegal and investigator services" and "Retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing," which are now included as reasonably necessary activities for preparation and attendance at the probable cause hearing in the newly amended parameters and guidelines, under "Retention of Court-Approved Experts/Investigators/Professionals" when they submitted their reimbursement claims under the old parameters and guidelines. As a result, some claimants may dispute and provide evidence that they are entitled some of those reduced costs, which the SCO might then reinstate.

- *The actual amount deemed eligible for reimbursement may decrease and result in lower costs than the statewide cost estimate.*

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<sup>6</sup> State Controller's Office State Mandated Costs Claiming Instructions No. 2014-10, Revised September 2, 2014.

<sup>7</sup> State Controller's Office, Division of Accounting and Reporting Bureau of Payments - Local Reimbursements Section, Sexually Violent Predators Program, Schedule of Reduced Reimbursement Claims.

<sup>8</sup> Claims data reported as of February 12, 2015.

As mentioned above, the three reimbursable activities under the current parameters and guidelines are not exactly the same as any of the prior reimbursable activities. “Transportation and Housing Costs for Potential Sexually Violent Predators” was reimbursable under the prior parameters and guidelines. However, that is significantly broader than what is now reimbursable:

Transportation for each potential sexually violent predator between the designated secured housing facility and the court only for purposes of a probable cause hearing. Counties shall be entitled to reimbursement for such transportation costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of transportation, in which case no reimbursement of such costs shall be permitted.

And;

Housing for each potential sexually violent predator from the time of the court’s order that the person be detained in a secure facility pending a probable cause hearing pursuant to Section 6602, until the probable cause hearing is complete.<sup>9</sup>

To the extent costs claimed for transportation and housing under the former parameters and guidelines for 2011-2012 and 2012-2013 exceed what is reimbursable under the current parameters and guidelines, those claimed cost may be reduced by the SCO.

- *The actual amount claimed for reimbursement in future years may increase and exceed the statewide cost estimate for prospective annual costs.*

There are currently 58 counties in California. Of those, roughly two-thirds filed claims for fiscal years 2011-2012 and 2012-2013. If more counties file claims in the future, costs may exceed the estimate of prospective annual costs.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable or that do not comply with the parameters and guidelines. Furthermore, amended claims may reflect an amount owed *to* the state by the claimant because payments made on the original claim were in excess of the amended claim.

### Methodology

Fiscal years 2011-2012 and 2012-2013.

As described earlier in this statewide cost estimate, the SCO is reducing the reimbursement claims which were not amended by denying costs for all activities except for “Preparation/Attendance at Probable Cause Hearing” and “Transportation and Housing Costs for Potential Sexually Violent Predators”. The table below shows the full claimed amount from these original claims as well as the amount identified for reduction in those claims by the SCO. The statewide cost estimate for fiscal years 2011-2012 and 2012-2013 was developed by adding the SCO’s net estimated claimed amount for the 74 claims, which were not amended, and the total of the amended claims for a total of \$14,051,306. The estimate of prospective future costs

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<sup>9</sup> Exhibit B. Parameters and Guidelines Amendment, adopted May 30, 2014, Corrected February 27, 2015, page 4.

was developed by averaging the costs for the two years of data and rounding up to the nearest thousand.

Following is a breakdown of the claimed costs per fiscal year:

<b>Fiscal Year 2011-2012</b>	<b>Number of Claims</b>	<b>Original Claimed Amount</b>	<b>Original Reduced Amount</b>	<b>Net Estimated Claimed Amount</b>	<b>Amended Claimed Amount</b>	<b>Total Amount Claimed</b>
Original Claims	34	\$7,854,747	(\$5,572,715)	\$2,282,032		
Amended Claims	5				\$4,894,756	
Total	39					\$7,176,788
<b>Fiscal Year 2012-2013</b>	<b>Number of Claims</b>	<b>Original Claimed Amount</b>	<b>Original Reduced Amount</b>	<b>Net Estimated Claimed Amount</b>	<b>Amended Claimed Amount</b>	<b>Total Amount Claimed</b>
Original Claims	30	\$6,759,133	(\$4,258,674)	\$2,500,459		
Amended Claims	5				\$4,374,059	
Total	35					\$6,874,518
<b>Grand Total</b>	<b>74</b>					<b>\$14,051,306</b>

**Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$14,051,306** (approximate prospective cost of \$7,026,000 annually) for costs incurred in complying with the *Sexually Violent Predators* program.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 February 27, 2015, I served the:

**Draft Proposed SCE**

*Sexually Violent Predators*, CSM-4509 (12-MR-01)

Welfare and Institutions Code section 6602

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);

Statutes 1996, Chapter 4 (AB 1496)

As Modified by: Proposition 83, General Election, November 7, 2006

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 February 27, 2015 at Sacramento, California.



---

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## Mailing List

**Last Updated:** 2/19/15

**Claim Number:** CSM-4509 (12-MR-01)

**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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