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Received
March 26, 2013
Commission on
State Mandates

March 26, 2013

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

Dear Ms. Halsey:

RE: Mandate Redetermination Request, 12-MR-01
Sexually Violent Predators (CSM-4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1006, Chapter 4
California Department of Finance, Requester

On behalf of the Los Angeles County District Attorney's Office, I am writing to express my strenuous opposition to the above-referenced request for a new test claim decision.

In 1998, consistent with the mandate set forth in article XIII B, section 6, of the California Constitution,¹ the Commission on State Mandates (Commission) issued a Statement of Decision in support of this county's test claim for reimbursement regarding Sexually Violent Predator (SVP) legislation.² The activities for which the county is being reimbursed, the basis for the Commission's Statement of Decision, and the need for reimbursement from the State in order to comply with SVP laws have not changed since the Statement of Decision was adopted.

The Department of Finance's Request to Adopt a New Test Claim Decision (Request) argues that the passage of Proposition 83 (Prop 83) resulted in a "subsequent change in the law," a precondition to the filing of a request for a new test claim decision pursuant to Government Code section 17570 (Section 17570). However, the Request mischaracterizes the substantive content of Prop 83 and its effect on then-existing Ms.

¹ Cal Const, art. XIII B § 6. ("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 that local government for the costs of the program or increased level of service....")

² Statement of Decision Pursuant to Government Code Section 17500 et seq. (adopted on June 25, 1998) (Statement of Decision).

legislation. Prop 83 amended SVP laws in areas wholly unrelated to the enumerated activities for which the Commission approved the county's test claim for reimbursement, rendering Section 17570 inapplicable. As such, the state has a continuing obligation to reimburse the county for services related to the SVP laws that the state created. Additionally, on both equitable and constitutional grounds, the state is precluded from seeking a new test claim decision for the SVP mandate. The state is equitably estopped from terminating subvention in that it explicitly advised the electorate that the state, not the counties, would be responsible for the fiscal costs associated with the SVP-related provisions of Prop 83 were it to pass. Finally, the state's application of Section 17570 to the presently-existing SVP mandate is patently unconstitutional.

No Subsequent Change in the Law

In 2006, the legislature passed Senate Bill 1128 (SB 1128), urgency legislation that went into effect on September 20, 2006. Among other provisions, many of which redefined and increased the consequences for various sex offenses, SB 1128 broadened existing SVP laws. Specifically, SB 1128: added specified juvenile offenses and other crimes to the definition of a "sexually violent offense"; provided that finding a person is an SVP would toll his or her period of parole; and changed terms of commitment for SVPs from renewable two year periods to indeterminate terms.³

Less than two months later, the electorate passed Prop 83, commonly known as "Jessica's Law." Prop 83 simply reaffirmed many of the changes already effectuated by SB 1128, redefining and increasing the consequences for enumerated sex offenses and expanding existing SVP laws. Mirroring the changes already codified by SB 1128, Prop 83 added various juvenile offenses to the definition of a "sexually violent offense" and changed terms of commitment for SVPs from renewable two year periods to indeterminate terms.⁴ The only two significant changes Prop 83 made to post- SB 1128 SVP laws concern standards for the release of SVPs from state mental hospitals⁵ and the number of prior victims of SVP offenses necessary to qualify an offender for a SVP commitment.⁶ Importantly, the added requirement that the Department of Health consider the interests of an SVP and the community at the time of release, and an expansion of the category of

³ http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1101-1150/sb_1128_bill_20060920_chaptered.pdf.

⁴ <http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>.

⁵ Welf. & Inst. Code, § 6605, subd. (b). The Department of Mental Health is now required, as part of its annual review, to examine whether a person being held in a state hospital as an SVP still meets the definition of an SVP, whether release is in the best interest of the person, and whether conditions could be imposed at the time of release that would adequately affect the community.

⁶ Welf. & Inst. Code, § 6600, subd. (a)(I). The number of victims required to qualify an offender for an SVP commitment was reduced from two to one.

those who would be eligible for an SVP commitment, did not affect the foundational operation of SVP laws. The procedures in place at the county level for the evaluation, prosecution, and processing of sexually violent offenders – and, importantly, the specified activities for which the state has acknowledged its obligation to reimburse Los Angeles County – did not change.

The Request submitted by the Department of Finance sweepingly argues that “[t]he enactment of Prop 83 constituted a ‘subsequent change in law’ . . . because all of the Welfare and Institutions Code sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83.”⁷ It further suggests that “[b]ecause voters approved all of the text in Prop 83, including divisions not amended, the sections that formed the SVP mandate are no longer reimbursable”⁸

This argument is profoundly misleading. The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by SB 1128. The Secretary of State’s practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the electorate. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.⁹

The Department of Finance’s secondary argument that the fundamental SVP-related services recognized by the Commission serve to facilitate the implementation of the statutory revisions effected by Prop 83 grossly mischaracterizes the body of statutes that govern SVP commitment procedures. As the only SVP-related changes made by Prop 83 concern the two provisions discussed above, the SVP laws unaffected by Prop 83 cannot fairly or accurately be described as existing for purposes of implementation.

Statement of Decision by Commission on State Mandates

On June 25, 1998, the Commission adopted the Statement of Decision for the SVP mandate and approved reimbursement to Los Angeles County for specified activities.

⁷ Request, at p. 2. In making this argument, the Department of Finance is relying on a statute that provides that the state is not obligated to reimburse a local government for duties that are “necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” Govt. Code, § 17556, subd. (f). See *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1207 (observing that the California Constitution requires reimbursement for mandates imposed by the legislature, but not by ballot measures).

⁸ *Id.*

⁹ <http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 127-138.

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 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.”¹⁰

In its Statement of Decision, the Commission approved the test claim for reimbursement for the following activities, each of which is substantively and procedurally identical to SVP services that continue to be provided through the present day. As will be explained, the Department of Finance’s analysis of each of the mandated activities, and the alleged effect Prop 83 had on the respective activities, is simply untenable.

Activity 1: *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).)*

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 2: *Initial review of reports by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)*

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

¹⁰ Statement of Decision, at p. 1.

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The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 3: Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was "reenacted" by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 4: Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602, subd. (i).)

The Request argues that this activity, which pertains exclusively to the need for counsel at probable cause hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms. The Request contends that preparation and attendance by a prosecutor and a defense attorney at a probable cause hearing was thus converted from being a reimbursable activity to an activity "necessary to implement" lengthier commitment terms.

An activity may not fairly be recharacterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law. This argument also fails in that there was no change in the law. The statutory revision proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Ms. Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test

claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

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

The Request argues that providing constitutional rights to SVPs is a necessary component to the implementation of Prop 83 and therefore not reimbursable. Alternatively, the Request notes that portions of the cited section (Welf. & Inst. Code, § 6604) were reaffirmed by Prop 83.

This activity concerns the need for prepared counsel to participate in an SVP's trial and is analogous to the Commission's recognition of the mandate to reimburse services provided at probable cause hearings, identified in Activity 4. A reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications. Indeed, the Commission recognized in its Statement of Decision 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."¹¹

Also, Prop 83 did not result in any pertinent changes in the law. The amendment proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 6: Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6605, subds. (b) through (d) and Welf. & Inst. Code, § 6608, subds. (a) through (d).)

The Request argues that the rights of a committed SVP were affected by Prop 83's restatement of an existing code section (Welf. & Inst. Code, § 6605(d)) that involved constitutional protections. The Request also notes that another section (Welf. & Inst.

¹¹ Statement of Decision, at p. 1.

Code, § 6608) was similarly “amended and reenacted” by Prop 83. For each reason, the Request maintains, the activity is no longer reimbursable.

Prop 83 did not affect the need for the prosecution and appointed defense counsel to prepare for and attend hearings regarding the condition of an SVP. And again, a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications. Finally, the inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 7: Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6603, 6604.)

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

The need for the county to provide constitutional protections was the basis of the Commission’s 1998 finding that state reimbursement was necessary and appropriate. As noted by the Commission, “case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right.”¹² The Commission continued: “[L]ocal agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state.”¹³

¹² Statement of Decision, at p. 11 (citing *Mason v. State of Arizona* (9th Cir. 1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.App.3d 514).

¹³ *Id.* (emphasis in original).

Also, a mandated service may not fairly be recharacterized as “necessary to implement” another activity simply because an antecedent activity may have been affected by a change in the law. And, as previously stated, the amendment proposed in Prop 83 involving the length of an SVP’s commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83’s mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 8: 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 Department of Finance did not submit an argument challenging the appropriateness of continued subvention with respect to this SVP-related activity.

Equitable Estoppel

On September 2, 2005, the Legislative Analyst’s Office (LAO), in association with the Department of Finance, sent California Attorney General Bill Lockyer a fiscal analysis of the initiative eventually known as Prop 83.¹⁴ Attorney General Lockyer relied on the contents of that statement in composing and generating a title and summary analysis that was required to be prominently featured on each page of every petition on which signatories in support of the initiative signed their names.¹⁵ Presumably, the LAO’s fiscal analysis of the initiative informed those whose signatures were necessary to place Prop 83 on the 2006 statewide ballot that counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.¹⁶ The portion of the

¹⁴ <http://ccoso.org/LAOjessica.doc> (Sept. 2, 2005). At the time, the initiative was entitled, “Sexual Predator Punishment and Control Act: Jessica’s Law.”

¹⁵ Each section of the petition must contain the Attorney General’s title and summary and the full text of the initiative measure. (Elec. Code, § 9012.) The Attorney General’s title and summary must be in at least 12-point Roman boldface type and the full text of the initiative measure shall be in at least 8-point type. Each page on which signatures are to appear must contain a copy of the Attorney General’s title and summary and the unique numeric identifier provided by the Attorney General. (Elec. Code, §§ 9008, 9009, 9012.)

¹⁶ <http://ccoso.org/LAOjessica.doc> at pp. 4-6. In pertinent part, and with emphasis added, the analysis read as follows:

letter that advised the Attorney General of the measure's net fiscal effects expressly indicated: "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state."¹⁷

When Prop 83 qualified for the November 2006 general election ballot, the state again assured the electorate that the state would absorb any additional fiscal costs associated with the SVP laws were the initiative to pass. The Secretary of State¹⁸ and the Legislative Analyst, each of whom was credited with the preparation of the widely-disseminated 2006 Voter Information Guide, advised potential voters that increasing the number of sex offenders eligible for SVP commitments would result in substantially increased costs *to the state*.¹⁹

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of million dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

....

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs. . . .

(continued)

This measure would have the following net fiscal effects:

Unknown net costs *to the state*, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.

Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. *The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.*

¹⁷ *Id.* at 6.

¹⁸ On the cover of the Voter Information Guide, Secretary of State Bruce McPherson signed a Certificate of Correctness, affirming that "this guide has been correctly prepared in accordance with the law."
<http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 1.

¹⁹ In pertinent part, the Legislative Analyst wrote:

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California courts have long held that voters are presumed to carefully review published materials that concern the initiatives on which they vote, including measures that are more complex. In 1990, the California Supreme Court found:

In order to further the fundamental right of the electorate to enact legislation through the initiative process, this court must on occasion indulge in a presumption that the voters thoroughly study and understand the content of complex initiative measures. . . . Relying on this presumption we attempt to ascertain and implement the purposes of the measure.²⁰

Quoting the California Supreme Court, another appellate court more recently intimated that Voter Information Guides are to be regarded as persuasive when a ballot measure is not clear as to a particular issue: “Where there is ambiguity in the language of the measure, ‘[b]allot summaries and arguments may be considered when determining the voters’ intent and understanding of a ballot measure.’”²¹

As the electorate is presumed to have relied upon the state’s broadly publicized assurances regarding the state’s assumption of the fiscal costs associated with Prop 83 were it to pass, the state is foreclosed from using Prop 83 as the basis of its invocation of Section 17570 and request for a new test claim decision.

Section 17570 is Unconstitutional

Section 17570 is unconstitutional as a violation of the separation of powers doctrine. In 2009, the case of *California School Boards Association v. State of California* determined

State SVP Program Costs. By making more sex offenders eligible for SVP commitments, this measure would result in increased *state* costs generally in the following categories:

Referral and Commitment Costs. These costs are mainly associated with screening sex offenders referred by CDCR to DMH to determine if they merit a full evaluation, performing such evaluations, and providing expert testimony at court commitment hearings. This measure would increase these *state* costs probably by the low tens of millions of dollars annually. These costs would begin to occur in the initial year of implementation.

State Hospital Costs. *State* costs to staff, maintain, and operate the mental hospitals could reach \$100 million annually within a decade and would continue to grow significantly thereafter.

<http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 45 (emphasis added).

²⁰ *Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Commission* (1990) 51 Cal.3d 744, 768.

²¹ *Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1381-1382, quoting *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.

that the legislature could neither direct nor request that the Commission reconsider a previous test claim decision.²² The Commission was a quasi-judicial decision-maker, the court found, working independently of the legislature; for the legislature to direct or request the Commission to reconsider its prior ruling was a violation of the separation of powers doctrine.²³

In an apparent attempt to circumvent this holding, the next year, the legislature passed Section 17570, which codified that which remains constitutionally impermissible. Section 17570 provides that a request that the Commission adopt a new test claim decision may be filed by any of various enumerated government entities, including those within the executive branch of government: the Department of Finance, the Controller, or “any other affected state agency.”²⁴ Yet, if the separation of powers doctrine precludes the legislature from petitioning the Commission to reconsider an earlier decision, as was established in the *California School Boards Association* case, the prohibition applies also to the executive branch.

Additionally, Section 17570 is unconstitutional as an infringement of article XIII B, section 6, of the California Constitution, which was designed “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁵ Section 17570 provides a procedure for a new test claim where there is a “subsequent change in the law,” which is all-inclusively defined to require a “finding that an incurred cost is a cost mandated by the state . . . or is not a cost mandated by the state”²⁶

²² *California School Boards Assn. v. State of California*, *supra*, 171 Cal.App.4th at p. 1199. The legislature's direction to the Commission to reconsider or set aside its final decisions is an unlawful collateral attack on those decisions. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), it is not subject to collateral attack. As a collateral attack, the legislature's direction to the Commission to set aside or reconsider Commission decisions went beyond the power of the legislature. *Id.* at p. 1200.

²³ *Id.* at pp. 1199-1200. *See id.* at p. 1198, *quoting Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1102 (“From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine.”). The Court of Appeal noted that over time a prior claims decision might be rendered obsolete by changes in the law and material circumstances. The opinion did not decide whether the Commission had the inherent power to reconsider its own earlier ruling or if the legislature could provide a process for obtaining reconsideration. *Id.* at pp. 1202-1203.

²⁴ Govt. Code, § 17570, subd. (c).

²⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 79.

²⁶ Govt. Code, § 17570, subd. (a)(2).

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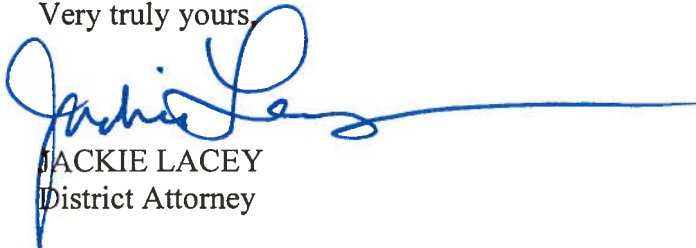
While ostensibly clarifying a constitutional mandate, Section 17570 quietly eviscerated it. Under the provisions of Section 17570, the legislature can avoid paying for a program by making minor changes in that program, then calling for a new test claim decision based on the "subsequent change in the law." This opportunity allows the state to attempt to shift the costs of an entire legislatively-enacted program to local governments, undermining the very purpose this section of the California Constitution.

Conclusion

Contrary to the assertions of the Department of Finance, Prop 83 did not affect the SVP laws that pertain to the subvention mandate adopted by the Commission on State Mandates in 1998. Prop 83 changed SVP laws in two very limited areas, neither of which substantively altered any of the eight activities identified by the Commission in its Statement of Decision. Each of the services for which reimbursement was found to be necessary and appropriate continues to be performed, is an integral component of the county's handling and prosecution of SVP cases, and remains in need of state funding. The Department of Finance's activity-by-activity analysis of Prop 83's effect on SVP laws is based largely on two highly dubious arguments: (1) that extraneous text included in the body of Prop 83 constituted a change in the law; and (2) that Prop 83 converted services identified in the Commission's 1998 Statement of Decision from being reimbursable activities, many of which are constitutionally mandated, to being mere instruments of implementation. Neither position is supportable. Absent a "subsequent change in law," Section 17570 is not available to the state in support of its request for a new, superseding test claim decision. Additionally, the state is collaterally estopped from seeking a new test claim decision on constitutional grounds and in that it assured the electorate that the state would reimburse the counties, in full, for costs related to the SVP provisions in Prop 83.

I respectfully request that you decline the Department of Finance's Request to Adopt a New Test Claim Decision with respect to the SVP-related services for which this and other counties throughout California receive critical reimbursement from the state.

Very truly yours,



JACKIE LACEY
District Attorney

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