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RECEIVED
April 10, 2019
*Commission on
State Mandates*

April 10, 2019

Via Drop Box

Heather Halsey
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RE: Request for Comment and Legal Argument Relating to the Reconsideration of the Request for Mandate Redetermination on Remand, 12-MR-01-R, Pursuant to County of San Diego, et al. v. Commission on State Mandates, et al. (2018) 6 Cal.5th 196

Reconsideration of the Request for Mandate Redetermination on Remand
Sexually Violent Predators (CSM-4509), 12 MR-01-R
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4
Department of Finance, Requester

Dear Ms. Halsey:

The County of San Bernardino hereby responds to the above-referenced proceeding on remand as set forth in your letter of February 8, 2019. The County of San Bernardino joins and incorporates the comments submitted by the Counties of San Diego, Los Angeles, Sacramento, and Orange. In your letter, the Commission requests “all parties, interested parties, and interested persons receiving this letter” to comment on the following issues:

“Whether the expanded SVP definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties.”

“[H]ow, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments.”

As a preliminary matter, the County of San Bernardino objects to the Commission’s request for comments at this time. The issue of whether the expanded definition of a sexually violent predator

(SVP) in Proposition 83 adopted by the voters in 2006 changes the State's duty to reimburse the counties and if so, how it changes those duties, has not been previously considered by the Commission. The Commission should therefore handle these questions as it would any other similar request in the first instance – as a request for mandate redetermination. The Department of Finance (DOF) should provide its legal and factual basis for its redetermination request. The submission by the DOF on March 22, 2019 does not set forth any facts to support the request for redetermination and ignores the information in the possession of the State that indicate that Proposition 83 did not substantially change the mandates under SVP statutes. Only after DOF has met this burden should interested parties be required to submit comments. Since the DOF has not set forth a factual basis for seeking redetermination, the County of San Bernardino hereby reserves the right to submit further data regarding specific SVP cases, should the Commission find that DOF has met its initial burden.

1. The expanded SVP definition did not transfer the test claim statute into a voter imposed mandate or impose new, additional duties on the Counties.

The enactment of Proposition 83 modified the SVP criteria by decreasing the number of victims from two to one. However, this change is de minimis when compared to the overall SVP program and did not did not relieve the counties of their preexisting state mandated activities per Welfare and Institutions Code section 6001 through 6604. This is further supported by the comments previously submitted by the County of Los Angeles on March 26, 2013, and the County of San Diego on March 27, 2013, which set forth the specific duties under the SVP statutes and the de minimis, if any, change to local government duties pursuant to Proposition 83.

The impact of Proposition 83 is not a new subject for the state and has been examined and analyzed thoroughly in a 2010 State Auditor report prepared for the California Governor and state legislators.

In its report, the State Auditor indicated that “despite the increased number of referrals, as of September 2010, the relative percentage of offenders whom the courts committed as SVPs declined each year after the first full year that Jessica’s Law was in effect.” The report noted that despite “the passage of Jessica’s Law in 2006 resulted in significantly more sex offenders (offenders) becoming potentially eligible for commitment as sexually violent predators (SVPs) under the Sex Offender Commitment Program (program). However, the courts have committed very few of the thousands of offenders whom the Department of Corrections and Rehabilitation (Corrections) referred to the Department of Mental Health (Mental Health) for evaluation.”

“Thus, Jessica’s Law has not resulted in what some expected: the commitment as SVPs of many more offenders. Although an initial spike in commitments occurred in 2006 and 2007, this increase has not been sustained. By expanding the population of potential SVPs to include offenders with only one victim rather than two, Jessica’s Law may have unintentionally removed an indirect but effective filter for offenders who do not qualify as SVPs because they lack diagnosed mental disorders that predispose them to criminal sexual acts. In other words, the fact that an offender has had more than one victim may correlate to the likelihood that he or she has a diagnosed mental disorder that increases the risk of recidivism.”

The likely reason for the lack of any significant statistical increase in SVP filings is because the offender is still required to be diagnosed with a mental disorder and such diagnoses require demonstration of a pattern of behaviors, fantasies or urges that have occurred for at least six months, which would be difficult to obtain in a case with a single victim. Pursuant to WIC 6600, a “Sexually Violent Predator” is a person who has been convicted of a sexually violent offense against one or more victims, and, who has a diagnosed mental disorder that makes the person a danger to the health and safety of others, in that it is likely that he or she will engage in sexually violent predatory behavior. A “diagnosed mental disorder” is defined in the statute as “A congenital or acquired condition affecting the emotional or volitional capacity that pre-disposes the person to the commission of criminal sexual acts.” The final criteria is that it must be determined that the individual’s diagnosed mental disorder makes it likely that he or she will engage in sexually violent predatory behavior if released into the community.

2. The expanded definition in Proposition 83 had no discernable long term effect on the number of SVP filings in San Bernardino County.

Similar to the statewide data trend discussed in the State Audit, San Bernardino County has experienced a general decline in SVP filings year over year since the passage of Jessica’s Law. The data available at this time ranges from 2002 to 2018 and indicates that prior to Jessica’s Law, 2002 to 2006, the average number of SVP filings countywide was 9.2 per year. After Jessica’s Law passed, 2007 to 2018, the average number of SVP filings countywide was 6 per year.

The Commission previously found that the original SVP statutes required the performance of eight specific duties by local governments and that those activities were reimbursable by the State. None of these duties changed due to the passage of Proposition 83. As such, the mandate from the State remains in effect and the request for redetermination by the DOF should be denied.

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

Very Truly Yours,

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

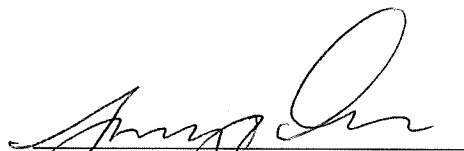
On April 11, 2019, I served the:

- **County of Los Angeles District Attorney's Office's Late Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Los Angeles's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Orange's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of Sacramento's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Bernardino's Comments on the Mandate Redetermination on Remand filed April 10, 2019**
- **County of San Diego's Comments on the Mandate Redetermination on Remand filed April 10, 2019**

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by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 11, 2019 at Sacramento, California.



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Mailing List

Last Updated: 4/5/19

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

Matter: Sexually Violent Predators

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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