



**RECEIVED**  
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**Commission on  
State Mandates**

# County of San Diego

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February 15, 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 Diego requests that the Commission modify the comment period in the above-referenced proceeding on remand as set forth in your letter of February 8, 2019. Rather than require the simultaneous exchange of briefs and comments, the Department of Finance (“DOF”) should be requested to submit its analysis explaining how the state's liability for mandate reimbursement was modified based on a “subsequent change in law” before receiving comments from interested parties, including the counties that were parties to the previous lawsuit.

In 1998, the Commission found certain provisions of the 1995 Sexually Violent Predators Act (“SVPA”) to be reimbursable state mandates.<sup>1</sup> Then, in 2006, California voters adopted Proposition 83, which reenacted portions of the SVPA. DOF filed a

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<sup>1</sup> Statement of Decision adopted June 25, 1998, <https://www.csm.ca.gov/matters/4509.php>.

Request for Mandate Redetermination with the Commission in 2013, alleging Proposition 83 constituted a “subsequent change in law” under Government Code section 17570.<sup>2</sup> In late 2013, the Commission found six of the eight mandated duties were no longer reimbursable because they were voter-approved.<sup>3</sup>

In 2018, the California Supreme Court held the Commission erred when it found the SVPA duties were no longer reimbursable “simply because certain provisions of the SVPA had been restated without substantive change in Proposition 83.”<sup>4</sup> In reaching its decision, the Supreme Court resolved the issue that was the basis for DOF’s request for mandate redetermination, i.e., - whether Proposition 83’s reenactment of SVPA provisions (on that sole basis) constituted a “subsequent change in law”.

However, the Supreme Court directed the court of appeal to remand the matter to the Commission to “determine, *in the first instance*, whether and how the expanded definition of a sexually violent predator (SVP) may affect the state’s obligation to reimburse the Counties for implementing the amended statute.”<sup>5</sup> Whether the expanded definition of SVP in Proposition 83<sup>6</sup> changes the state’s duty to reimburse the counties, and if so, how it changes those duties, are questions not 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.

In its letter dated February 8, 2019, the Commission directs “all parties, interested parties, and interested persons receiving this letter” to its new matter page, which contains DOF’s original 2013 request for redetermination and requests written comments by March 9, 2019. Yet, as noted above, the question presented in DOF’s 2013 request – whether the reenactment of SVPA provisions in Proposition 83 constituted a subsequent change in law – was resolved by the Supreme Court in 2018. The question remanded by the Supreme Court and at issue here – whether the expanded SVP definition in Proposition 83 constituted a subsequent change in law – has not yet been briefed by the parties. As an initial step, DOF should provide a “detailed analysis of how and why” a mandate redetermination is appropriate, so all interested parties understand the bases for DOF’s request. Only after DOF has met this burden should interested parties be required to submit comments.

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<sup>2</sup> Request to Adopt a New Test Claim Decision filed by the Department of Finance (DOF) submitted on January 15, 2013, <https://www.csm.ca.gov/matters/4509.php>.

<sup>3</sup> Adopted New Test Claim Statement of Decision adopted December 6, 2013, <https://www.csm.ca.gov/matters/4509.php>.

<sup>4</sup> *County of San Diego v. Comm’n on State Mandates*, 6 Cal. 5th 196 (2018).

<sup>5</sup> *Id.* at 201 (emphasis added).

<sup>6</sup> The definition of SVP is codified in California Welfare and Institutions Code section 6600.

The County of San Diego requests that DOF be required to file a brief with the Commission setting forth the legal and factual basis for its request for redetermination on March 11, 2019, as requested in the Commission's letter of February 8th. Once DOF meets this initial burden, the Commission should allow a 30 day period for interested parties, including the counties that were the parties to the previous lawsuit, to submit comments in response to DOF. This tiered briefing schedule will enable interested parties to submit more informed and targeted comments than under the simultaneous briefing proposed by the Commission.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By



TIMOTHY M. BARRY, Chief Deputy

14-90097

**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.

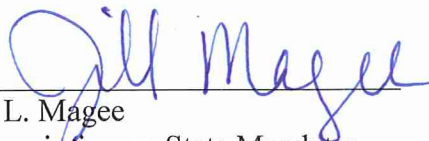
On February 22, 2019, I served the:

- **County of Los Angeles's Response to the Request for Comment filed February 19, 2019**
- **County of Orange's Response to the Request for Comment filed February 19, 2019**
- **County of Sacramento's Response to the Request for Comment filed February 19, 2019**
- **County of San Bernardino's Response to the Request for Comment filed February 19, 2019**
- **County of San Diego's Response to the Request for Comment filed February 15, 2019**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 22, 2019 at Sacramento, California.



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

**Matter:** Sexually Violent Predators

**Requester:** Department of Finance

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

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