



1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500

Facsimile
916.441.5507

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Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Redetermination of the Sexually Violent Predators Mandate (12-MR-01)

Dear Commissioners:

On behalf of the California State Association of Counties, I respectfully submit our opposition to the mandate redetermination request 12-MR-01.

The state's and obligation to provide reimbursement for the Sexually Violent Predators mandate has not ceased, and its liability has not been modified. Therefore, the Commission should reject the claim made by the Department of Finance.

First of all, and most importantly, the language in the California Constitution makes it clear that the state is required to reimburse counties for the costs of the program. Secondly, the parts of the SVP program that established a reimbursable mandate were unaffected by the passage Proposition 83 (2006). Third, voters did not make the changes the Department of Finance alleges they did in passing Proposition 83. Finally, voters were specifically told in official materials for Proposition 83, by the Director of Finance himself, that counties would be reimbursed in full by the state for their costs for participation in the SVP commitment process.

1. The California Constitution is clear that the state is still required to reimburse counties for the costs of the program.

The Constitution is unequivocal. Whenever the Legislature or a state agency mandates a new program, the state must provide funds to reimburse the costs of the program. There are four exceptions, but none of them are relevant in this case.

In particular, there is no exception for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place.

The Department of Finance does not dispute in its claim that the Legislature established the program. This is the only test the Constitution requires for whether or not a mandate is reimbursable. The ballot measure only enhanced punishment, it neither established a new program nor did it appreciably change the program. The Constitution puts the onus on the state to reimburse counties.

The fact that a statute — Government Code Section 17556(f) — purportedly allows a redetermination of a mandate claim on this basis does not trump the fact that the Constitution

clearly does not allow it. The Commission, in its quasi-judicial role, must reject the Department's claim on this basis alone.

2. The parts of the SVP program that established a reimbursable mandate were unaffected by the passage of Proposition 83.

Of the fourteen sections and subsections that formed the basis of the Commission's 1998 Statement of Decision, Proposition 83 amended only three (and in fact did not amend even these; see point three below).

One of those amendments was technical in nature (WIC 6608(a)), one changes the circumstances of hearings (WIC 6605(b)), and one extends sentence lengths, which does not affect the mandated activities (WIC 6604).

Because the ballot measure made no substantive changes to the reimbursable aspects of the program, the SVP program established by the Legislature would have remained in place whether voters approved or disapproved Proposition 83.

The Department of Finance further claims that even the sections that did not appear in the ballot language by accident of construction are "necessary to implement" changes the voters made. But the only effect of the voters' action was to enhance penalties for a population of offenders that were already identified for special procedures under a body of law previously established by the Legislature. As a result, the only necessary implementation for what the voters approved is to identify sexually violent predators.

The phrase "necessary to implement" requires necessity. Many other less onerous statutory schemes were available to the Legislature. They could have said that SVPs are identified by various psychological tests, or by the sentencing judge, or even simply by the offenses of which they were convicted. The complex, onerous scheme established by the Legislature is not necessary to implement enhanced penalties for a certain group of offenders.

As argued by the California District Attorneys Association in their comments on this matter dated March 19, 2013, the Department of Finance claims Government Code Section 17556(f) applies so broadly as to make it no different than the interpretation already ruled unconstitutional by the courts (*School Boards Assn. v. State of California (2009) 171 Cal.App.4th 1183*).

3. Voters did not make the changes the Department of Finance alleges they did in Proposition 83.

The Department of Finance's claim ignores the fact that many of the changes they claim voters made were in fact made by the Legislature. Their claim that voters reenacted several sections of

the mandated program is contingent on the provision of the Constitution that says a section of statute cannot be amended unless the section is re-enacted as amended.

SB 1128, by Senator Alquist, amended Sections 6600, 6601, 6604, 6604.1, and 6605 of the Welfare and Institutions Code, among many others. The bill was an urgency statute, going into effect immediately; its chaptering date was September 20, 2006.

The Commission should take a careful look at which changes Proposition 83 actually made, based on the changes SB 1128 made before it. We are sure that the Commission will note the provisions that were previously identified as constituting reimbursable mandates remain unchanged by Proposition 83.

4. The Director of Finance told voters that counties would be reimbursed in full by the state.

At the time Proposition 83 went to the ballot, the chief analysts representing both the Administration and the Legislature — the Director of Finance and the Legislative Analyst — agreed that all county costs related to the SVP commitment process would be reimbursed by the state. They stated the fact that counties would be reimbursed four times in their official fiscal analysis provided to the Attorney General, and voters decided the outcome of Proposition 83 based in part on that assurance.

In their official fiscal analysis of the ballot measure required by law, the Legislative Analyst and Director of Finance state unequivocally that Proposition 83 would increase state costs to, among other things, “reimburse counties for their costs for participation in the SVP commitment process.”

Later, when analyzing the measure’s fiscal impacts on local governments, the letter states that “[t]he provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.”

And then again in a paragraph detailing local costs, referring specifically to the costs of district attorneys and public defenders handling these civil cases and to jail operating costs: “Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.”

And finally, in the very last sentence of the letter, summarizing the fiscal effect on local government: “The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.”

For all these reasons, CSAC respectfully requests that you reject this claim when it comes before you for a vote. If you have any questions about our position, please do not hesitate to contact me at 916/327-7500 ext. 506.

Thank you for your careful attention to this matter.

Respectfully,

As signed

Matt Cate
Executive Director