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LEGISLATIVE AND

GOVERNMENTAL REPRESENTATION

April 10, 2007

*MARY Chris
Prof. Uelman*

Honorable Gloria Romero
California State Senate
State Capitol Building, Room 313
Sacramento, CA 95834

RE: SB 609 - Active Oppose

Dear Senator Romero:

On behalf of our client, the Peace Officers Research Association of California (PORAC), representing 60,000 rank-and-file peace officers and 750 public safety associations, I regret to inform you of their active opposition to your SB 609, relating to criminal procedure: Informants.

SB 609 would add section 1111.5 to the Penal Code, precluding conviction of a defendant on finding a special circumstance or aggravating fact based on the uncorroborated testimony of an in-custody informant. Corroboration cannot be evidence that shows that a crime was in fact committed, but must connect the defendant with its commission.

Of special note is the provision that "Corroboration of an in-custody informant shall not be provided by the testimony of another in-custody informant." This prohibition could prevent convicting murderers, child molesters and rapists, for example, when there was no reason to distrust the testimony of two or more in-custody informants.

As an example, suppose a person is convicted of rape and sentenced to prison. At Soledad, he brags in detail to his first cellmate that he also committed a particular unsolved murder. He is subsequently transferred to San Quentin, where he brags in detail to his second cellmate that he committed the murder. He is then paroled on the rape case. Both of the cellmates come forward as in-custody informants, and each has at least one detail of the crime that the other does not. But because they are the only proof linking the killer to the crime, he would not be prosecutable for the murder.

Custodial and correctional officers may be especially affected by this provision, because when one prisoner rapes/assaults/kills another prisoner or attacks a correctional officer, many of the potential witnesses will be "in-custody informants," because they're all in custody.

Under our adversary system, discrepancies in the testimony of two or more informants can easily be explored during cross-examination, and any inducements to the

informants for their testimony can be argued to the jury that makes credibility determinations, just as with any other witness. Moreover, many prosecutorial offices have internal policies restricting the use of jailhouse informants, and existing law contains further restrictions. PC §§ 1127a, 4001.1.

Despite the advent of DNA testing, computerized fingerprint matching, advances in forensic sciences and better-trained law enforcement officers, clearance rates for violent crimes remain low. According to the FBI Uniform Crime Reports, in 2005 (latest statistics available) the national clearance rate for murder was 62.1%, and for rape, 41.3%. Greater restrictions on the use of admissible evidence do not seem calculated to have a positive impact on these statistics.

Shielding confessed criminals from the folly of their own braggadocio may have a negative effect on public safety without reducing the risks that an innocent person will be wrongly convicted on the basis of unreliable informant testimony. SB 609's protection of confessed criminals in some cases by precluding two unrelated informants from cross-corroborating each other seems based on the disputable assumption that the adversary criminal trial is incapable of delivering justice in such cases.

If you have any questions, please feel free to contact me at (916) 448-3444.

Sincerely,



RANDY PERRY
Legislative Advocate

cc: Members, Senate Appropriations Committee
Consultant, Senate Appropriations Committee
Consultant, Senate Republican Caucus

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