

CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

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(representing
Jerry Brown)
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July 24, 2007

Timothy H. B. Yaryan
Legislative Counsel and Advocate
1127 11th Street, Suite 210
Sacramento, California 95814

Re: Opposition to SB 511 (Alquist), SB 609 (Romero) and SB 756 (Ridley-Thomas).

Dear Mr. Yaryan:

We are in receipt of your letters of opposition to the referenced bills on behalf of the Association for Los Angeles Deputy Sheriffs, the Riverside Sheriffs' Association, and the Los Angeles Police Protective League. While we appreciate the concerns expressed, there are a number of misconceptions regarding the intent and effect of these bills that should be clarified.

The letters indicate support for the principle of SB 511, but object to the "prejudicial jury instruction" required as part of the bill. You indicate the measure could be supported without this provision. Without this provision, however, a failure to record is now and would continue to be relevant and admissible evidence in any case where an unrecorded statement is offered in evidence. The bill clarifies the situations in which a failure to record would be excusable, and offers guidance to juries in evaluating unrecorded statements where there is no excuse. Other jurisdictions that require police interrogation to be recorded mandate the exclusion of unrecorded statements from evidence. This is a much less drastic alternative. Without it, the failure to record would have no consequence whatever.

The letters express opposition to SB 609, suggesting that although jailhouse informants are frequently unreliable, credibility issues are better left to the jury. The requirement of corroboration of accomplices has been part of California law since 1850. We believe there is no essential difference between the unreliability problems of jailhouse informants and accomplices. Most prosecutors assure us they would never seek a conviction based upon the uncorroborated testimony of a jailhouse informant. The Los Angeles County District Attorney's Office has endorsed this bill. Thus, the only effect of this bill will bring every prosecutor's office into conformity with the existing practice in responsible prosecutors' offices.

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The most serious misconception in your letters, however, is with respect to SB 756. This is a very different bill than the one vetoed by Governor Schwarzenegger last year (SB 1544). The Governor's concerns about "circumventing the legislative process" have been directly addressed. This bill simply requires the convening of a body of experts to *develop* guidelines. There is no requirement that the guidelines be mandatory, and there is no intent to suggest that mandatory enforcement be recommended. To obviate any such concern, the language you quote, that "The guidelines be transmitted to the legislature with recommendations of any legislation needed to enforce the guidelines," is being changed to call for "recommendations of any legislation needed to implement the guidelines." In any event, the legislative process is not being circumvented. The guidelines will have no effect without subsequent action by the legislature and approval by the Governor.

We appreciate your willingness to work with the authors of these bills, and hope these suggestions will assist in reconsideration of the position of the Associations you represent.

Sincerely,

Gerald F. Uelmen
Executive Director
California Commission on the Fair Administration of Justice

cc: Honorable Arnold Schwarzenegger, Governor of California
Honorable Elaine Alquist, Member of the Senate
Honorable Gloria Romero, Member of the Senate
Honorable Mark Ridley-Thomas, Member of the Senate
All California State Assembly Members
Association for Los Angeles Deputy Sheriffs
Riverside Sheriffs' Association
Los Angeles Police Protective League