

PRESS RELEASE  
September 1, 2006

FROM: CALIFORNIA COMMISSION ON THE FAIR  
ADMINISTRATION OF JUSTICE

CONTACT: Gerald F. Uelmen, Executive Director  
Tel. 408-554-5002  
Fax 408-554-5026  
Email [guelmen@scu.edu](mailto:guelmen@scu.edu)

**CALIFORNIA LEGISLATURE ADOPTS MEASURES RECOMMENDED BY  
CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF  
JUSTICE TO PREVENT WRONGFUL CONVICTIONS.**

Concurring in amendments proposed in the State Assembly, the California State Senate on August 31, 2006 enacted S.B. 171 and S.B. 1544, and sent both bills to Governor Arnold Schwarzenegger for signature. The bills embody recommendations made to the legislature by the California Commission on the Fair Administration of Justice, created by the State Senate to examine the causes of wrongful convictions and make recommendations and proposals to further insure that the administration of criminal justice in California is just, fair and accurate.

The first issue addressed by the Commission was the accuracy of eyewitness identification testimony. Mistaken eyewitness identification, the Commission learned, is the leading cause of the wrongful convictions that have been identified in recent research. After a public hearing, on April 13, 2006 the Commission issued a report concluding that it was “satisfied that the risk of wrongful conviction in eyewitness identification cases exists in California, as elsewhere in the country, and that reforms to reduce the risk of misidentification should be immediately implemented in California.” Specific recommendations were made for the conduct of police identification procedures such as lineup and photo displays, including the use of “double blind” procedures in which the officer conducting the lineup or photo display is not aware of the identity of the suspect, and the presentation of subjects in random sequential order, rather than simultaneously. In addition, the Commission recommended the enactment of legislation to require the Attorney General of California to convene a task force in conjunction with POST, local law enforcement agencies, prosecutors and defense attorneys, to develop Guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal

investigations by all law enforcement agencies operating in the State of California. It recommended the Guidelines be consistent with the recommendations of the Commission, and be promulgated to all law enforcement agencies operating in the State of California.

S.B. 1544, authored by Sen. Carole V. Migden (D-San Francisco), was amended to embody the recommendations of the Commission. The enactment will add Section 686.3 to the California Penal Code, to require the Department of Justice and the Commission on Peace Officers Standards and Training [POST], in consultation with a full spectrum of criminal justice agencies, to develop guidelines for the collection and handling of eyewitness evidence in criminal investigations by all law enforcement agencies operating in California. The guidelines are to be developed by July 1, 2007, and adopted by all law enforcement agencies by December 31, 2007. The legislation requires the guidelines to be “consistent with the reliable evidence supporting best practices, including consideration of the recommendations of the California Commission on the Fair Administration of Justice.”

The second issue addressed by the Commission was the problem of false confessions. In a report issued July 25, 2006, after a public hearing, the Commission recommended that the California Legislature mandate the electronic recording of all custodial interrogations relating to serious felonies by all police agencies in California. The Commission noted that a substantial number of police departments in California already report that they currently record a majority of custodial interrogations. Under the Commission’s proposal, failure to record the interrogation would require that the jury be instructed to view the statements obtained with caution. The Commission also urged all California law enforcement agencies to videotape all custodial interrogations of felony suspects, but did not recommend mandating the use of videotape at this time.

S.B. 171, authored by Senator Elaine K. Alquist (D-San Jose), was amended to embody most of the recommendations of the Commission. The scope of the electronic recording requirement was limited to homicide and violent felonies, rather than all serious felonies as recommended by the Commission, but the enactment mandates electronic recording of the police interrogation in its entirety, and requires that a jury be advised, in an instruction to be developed by the California Judicial Council, to view statements made in custodial interrogation that was not recorded with caution.

Commission Chair John Van de Kamp said he was pleased that the Commission was able to achieve virtual unanimity in its recommendations, being composed of prosecutors, defense lawyers, police representatives, a crime victim advocate and a judge. “We are gratified by the strong legislative support for our recommendations, and are optimistic that the Governor will sign both of these measures, since they are broadly supported by all segments of the criminal justice system.” he added.

The Commission is now turning its attention to the issues of jailhouse snitches and informant testimony. A public hearing on these issues will be held on September 20, 2006 in San Mateo. Also on the Commission’s agenda, which expires December 30, 2007, are problems surrounding forensic evidence, prosecutorial misconduct, defense lawyer incompetence, and the administration of the death penalty.