

PRESS RELEASE

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FROM: CALIFORNIA COMMISSION ON THE FAIR
ADMINISTRATION OF JUSTICE

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COMMISSION CHAIR JOHN VAN DE KAMP RESPONDS TO GOVERNOR
ARNOLD SCHWARZENEGGER'S VETOES OF MEASURES
RECOMMENDED BY CALIFORNIA COMMISSION ON THE FAIR
ADMINISTRATION OF JUSTICE TO PREVENT WRONGFUL
CONVICTIONS.

At 1:30 p.m. today, Commission Chair John Van de Kamp of the California
Commission on the Fair Administration of Justice issued the following statement:

On August 31, 2006, the California State Senate enacted S.B. 171 and S.B. 1544,
and with the concurrence of the State Assembly, sent both bills to Governor
Arnold Schwarzenegger for signature. The bills embodied 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. On September 30, 2006,
Governor Arnold Schwarzenegger vetoed both bills.

I. EYE WITNESS MISIDENTIFICATION.

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 would have added 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 were to be developed by July 1, 2007, and adopted by all law enforcement agencies by December 31, 2007. The legislation required 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.”

In his message vetoing S.B. 1544, the Governor stated, “It is unthinkable that we would allow the DOJ and POST such unprecedented authority over a fundamental step in our criminal justice system. I cannot support a measure that circumvents the legislative process and denies the public and their elected representatives the chance to approve or deny a statewide policy that could have a life-altering impact on an individual participating in our justice system.”

Chairman Van de Kamp responded, “The proposal was not intended to circumvent the legislative process, but at the urging of law enforcement, was drafted to assure full participation by affected criminal justice agencies in the formulation of guidelines. The legislature is always free, of course, to rescind or modify regulations to which it objects, but its delegation of authority to develop guidelines has never been viewed as a ‘circumvention’ of legislative

authority. Failure to comply with the guidelines would not have resulted in the exclusion of any eyewitness identification, but simply an instruction to the jury to view it with caution. It is hard to imagine a more life-altering impact upon an individual than to be wrongfully convicted and sent to prison or executed on the basis of a mistaken eyewitness identification, while the actual perpetrator of a violent crime remains at liberty. Wrongful convictions also impose tremendous costs on the taxpayers in the form of lawsuits and compensation to the wrongfully convicted.”

II. FALSE CONFESSIONS.

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 would have mandated electronic recording of the police interrogation in its entirety, and required 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.

In his message vetoing S.B. 171, the Governor stated, “the bill defines ‘custodial interrogation’ differently than the definition used by the U.S. Supreme Court for giving ‘Miranda rights’ and requires recording when someone is ‘suspected’ of any one of the twenty-three violent crimes listed under Penal Code 667.5, but does not specify what ‘suspected’ means. These drafting errors could lead to confusion for all involved parties and potential situations where law enforcement unknowingly fails to comply with the

mandates of the bill.” He encouraged the Legislature to “work with law enforcement to send me a bill that helps ensure the reliability of confessions while not creating opportunities for those guilty of violent crimes to avoid punishment because of a technical loophole.”

Chairman Van de Kamp responded, “The only difference between ‘custodial interrogation’ as defined in S.B. 171 and ‘custodial interrogation’ as defined by the U.S. Supreme Court in applying Miranda was that S.B. 171 was limited to interrogation ‘conducted at a place of detention,’ thus narrowing the applicability of the bill to exclude interrogations in squad cars or at the scene of a crime, where Miranda warnings would have to be given, but recording devices may not be readily available. The recording requirement created by S.B. 171 would not apply to an individual who was not suspected of a violent crime at the time of interrogation, regardless of what charges were subsequently filed. The proposal did not create a ‘loophole’ for those guilty of violent crimes to escape punishment. The existence of a tape recording of police interrogation would provide an objective and fair way to resolve claims that coercive interrogation techniques were used, ensuring the admission of confessions that were obtained in compliance with the law, and the exclusion of those that were not. It would be in the best interests of law enforcement and the taxpayers to resolve these claims without litigation. If a tape recording were not available, the jury would simply be instructed to consider the alleged confession with caution.”

Commission Chair John Van de Kamp concluded that he was disappointed that the Governor’s staff did not seek further clarification of the proposals before vetoing them, and apparently misunderstood how the proposals would operate. 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 remain optimistic that once the Governor’s staff understands the reasons for these measures, we can reach closure with language he is willing to accept.” Both measures will be reintroduced in the next legislative session. Meanwhile, the Commission is proceeding with its consideration of issues surrounding informant testimony and forensic evidence. The next public hearing of the Commission, addressing the problems of DNA backlog and other issues surrounding the use of forensic evidence, will take place in Sacramento on January 10, 2007.