

PRESS RELEASE
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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

**RECOMMENDATION OF CALIFORNIA COMMISSION ON THE FAIR
ADMINISTRATION OF JUSTICE TO REQUIRE CORROBORATION OF
JAIL HOUSE INFORMANTS IS ENACTED BY ASSEMBLY.**

Senate Bill 609, sponsored by Senator Gloria Romero (D-Los Angeles), to require the corroboration of testimony by in-custody informants, passed the State Assembly on September 4. The bill previously passed the State Senate on May 17 and will now go back to the Senate for concurrence in author's amendments before being presented to the Governor for signature. The bill is based upon recommendations made by the Commission in its [Report and Recommendations Regarding Informant Testimony](#), issued November 20, 2006.

Commission Chair John Van de Kamp, former L.A. County District Attorney and California Attorney General, noted that the Commission's recommendation that jail house informant testimony be corroborated was "a unanimous recommendation of a Commission that represents the full spectrum of involvement in the criminal justice system." Commission members who supported the recommendation were:

- Jon Streeter, Vice Chair
- Sheriff Lee Baca, Los Angeles County Sheriffs Dept.
- Diane Bellas, Alameda County Public Defender
- Harold O. Boscovich, Jr., Victims' Rights Advocate, Danville
- Chief William Bratton, Los Angeles Police Department
- Glen Craig, Sacramento
- Jim Fox, San Mateo County District Attorney
- Rabbi Allen Freehling, Los Angeles
- Michael Hersek, California State Public Defender
- Prof. Bill Hing, University of California at Davis
- Michael P. Judge, Los Angeles County Public Defender
- Bill Lockyer, California Attorney General
- George Kennedy, Santa Clara County District Attorney
- Michael Laurence, Habeas Corpus Resource Center

- Alejandro Mayorkas, Los Angeles
- U.S. Magistrate Judge John Moulds, Sacramento
- Prof. Cookie Ridolfi, Santa Clara University School of Law
- Douglas Ring, Santa Monica
- Greg Totten, Ventura County District Attorney

A survey conducted by the Commission in September, 2006, strongly suggested that California prosecutors would very rarely rely on the uncorroborated testimony of an in-custody informant to secure a criminal conviction. The Commission's Report notes that the policy of the Los Angeles County District Attorney's Office requires "strong corroborative evidence" before the testimony of an in-custody informant may be used. The Report concluded that the use of in-custody informant testimony is "rarely approved by any of the responding offices" in the survey conducted by the Commission. S.B. 609 was endorsed by Los Angeles County District Attorney Steve Cooley.

The statutory language of S.B. 609 defines an "in-custody informant" as a person *other than ... a percipient witness*. The corroboration requirement would not apply to jail or prison inmates who are percipient witnesses to crimes committed within correctional facilities. Only witnesses "whose testimony is based on statements allegedly made by the defendant while both the defendant and the informant were held" in a correction facility would be included.

The requirement of corroboration of witnesses whose credibility is inherently suspect is a fundamental precept of the common law tradition traceable to Mosaic and biblical roots.

One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.

Deuteronomy 19:15

If thy brother shall trespass against thee, go and tell him his fault between thee and him alone. . . . But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established. *Matthew 18:15-16*.

The requirement of corroboration of accomplices was incorporated into California Penal Law by the very first legislature. Stats. 1850 ch. 119. § 405. The requirements of S.B. 609 are closely modeled upon the accomplice corroboration requirements of Penal Code § 1111, which has been part of California law for 157 years.

S.B. 609 addresses one of the leading causes of wrongful convictions.

A report by the Northwestern University School of Law Center on Wrongful Convictions identified the use of such informants as among the three most prevalent factors in the wrongful convictions of death row inmates. After a review of the cases of 111 persons released from the nation's death rows after they were exonerated, from 1973 through 2004, the Center found use of false testimony from informants in 45.9% of the cases. That made false informant testimony the leading cause of wrongful convictions in U.S. capital cases – followed by erroneous eyewitness identifications (25.2% of the cases), and false confessions (14.4% of the cases). Northwestern University School of Law Center on Wrongful Convictions, *The Snitch System*, p. 3 (2005).

Last month, the national Innocence Project achieved their 205th DNA exoneration, establishing through incontrovertible scientific testing that Byron Halsey had been wrongfully convicted and imprisoned since 1988 for brutal sexual assaults and murders of two children committed by someone else. The testing established that the someone else who actually committed the crime had testified against Halsey at his trial. The case is reminiscent of the wrongful convictions chronicled by John Grisham in his book, "The Innocent Man," in which a jailhouse informant, whose testimony put Ron Williamson on death row for a brutal rape-murder he did not commit, was later shown to be the actual perpetrator of the crime.

Two other measures sponsored by the California Commission on the Fair Administration of Justice are awaiting final action by the Assembly.

- Senate Bill 511, sponsored by Senator Elaine K. Alquist (D-San Jose), will require the electronic recording of police interrogation in cases involving homicides and other serious felonies. The bill is based upon recommendations made by the Commission in its [Report and Recommendations Regarding False Confessions](#), issued July 25, 2006.
- Senate Bill 756, sponsored by Senator Mark Ridley-Thomas (D-Los Angeles), will require the appointment of a task force to draft mandatory guidelines for the conduct of police line-ups and photo arrays to increase the accuracy of eye-witness identifications. The bill is based upon recommendations made by the Commission in its [Report and Recommendations Regarding Eyewitness Identification Procedures](#), issued April 13, 2006.

Last week, Governor Mike Easley of North Carolina signed similar measures that establish guidelines for eyewitness identifications and require the recording of police interrogation in the wake of the Duke Lacrosse Scandal.