

SFGate.com[Return to regular view](#)[Print This Article](#)**CALIFORNIA****Legislature approves bills on wrongful convictions**- Bob Egelko, Chronicle Staff Writer
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California lawmakers, seeking to reduce the chances of innocent people going to prison, have approved proposals to require that interrogations of violent-crime suspects be tape recorded, and to set new guidelines for eyewitness identifications at lineups and photo displays.

The bills, sent to Gov. Arnold Schwarzenegger on the final day of the legislative session last week, grew out of findings by a state commission that was created to determine and eliminate the causes of wrongful convictions.

"These two issues, mistaken eyewitness identification and false confessions, are the two leading causes of false convictions," said Natasha Minsker, a lawyer with the American Civil Liberties Union, which supports the measures.

Schwarzenegger has not taken a position on the two bills and is being urged by some police groups to veto them.

In a letter to the governor, the California State Sheriffs Association said the interrogation-taping measure would be "a huge mandate on local law enforcement" because of the cost of recording equipment, and is too rigid in its requirements.

But former Attorney General John Van de Kamp, chairman of the California Commission on the Fair Administration of Justice, noted that the proposal is supported by most of the commission's law enforcement representatives, including Los Angeles Police Chief William Bratton, three district attorneys and Attorney General Bill Lockyer.

A commission report in July said the need to record interrogations is illustrated by numerous cases of suspects who confess to crimes they didn't commit.



One commission witness, Harold Hall, spent 19 years in prison for a rape and double murder in Los Angeles before being cleared by DNA testing in 2004. Another, Chris Ochoa, was exonerated by DNA tests after 12 years behind bars for a Texas rape-murder. Both said they had confessed under pressure and said jurors might have been able to detect that if the confessions had been taped.

The bills are the first to stem from reports issued by the commission, which the state Senate established in 2004 to look into the causes of wrongful convictions and recommend changes. Its 19 members include prosecutors, defense lawyers, police representatives and

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scholars.

Future hearings will look into the role of jailhouse informants, physical evidence, attorney incompetence and misconduct, and the administration of the death penalty. A final report is due at the end of 2007.

The interrogation bill, SB171 by Sen. Elaine Alquist, D-San Jose, would require audiotaping of violent-felony suspects questioned in a police station.

Confessions that were not recorded could still be introduced in court, under a 1982 ballot measure that requires California to follow federal standards on evidence. But the trial judge would have to tell jurors to consider the confession with caution.

The commission's report said many law enforcement agencies already tape at least a majority of their interrogations, including sheriff's departments in Alameda and Contra Costa counties, the San Francisco Police Department, and all agencies in Santa Clara County.

The California District Attorneys Association supports a statewide requirement, said Executive Director David LaBahn. He noted that the proposal was modified from earlier drafts to limit its coverage to violent felonies and to delete any requirement for videotaping.

As a former prosecutor in child-molestering cases, LaBahn said, he learned that when presenting evidence to a jury, "there's nothing better than having that individual speaking on tape."

The eyewitness bill, SB1544 by Sen. Carole Migden, D-San Francisco, addresses what the commission described as the leading cause of wrongful convictions, mistaken identifications. But the measure was softened considerably from earlier proposals by some commission members who wanted to set binding rules for all police agencies.

Instead, it would require Lockyer to form a task force that would draft statewide police guidelines for eyewitnesses, taking the commission's findings into consideration.

The key finding is that mistaken identifications can be reduced if the officer who supervises a lineup, or displays photos to a witness, doesn't know who the suspect is and thus is unable to give subtle hints to the witness.

The commission also recommended that photos or members of a lineup be presented to a witness individually, rather than in a group, so that the witness can make individual decisions rather than saying which person looks most like the suspect.

Witnesses should also be asked how certain they are of their identifications and should be told that the suspect may or may not be in the lineup or photo display, the commission said.

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