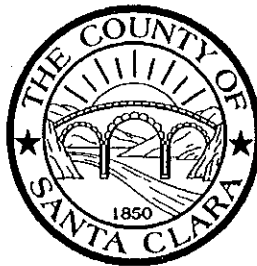


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December 6, 2007

Gerald F. Uelmen
Executive Director
California Commission on the Fair Administration of Justice
900 Lafayette Street, Suite 608
Santa Clara, California 95050

Re: California Commission on the Fair Administration of Justice

Dear Jerry:

Pursuant to my discussion with John Van De Kamp on December 5, enclosed please find a copy of a proposal that our Office submitted for a legislative change regarding Penal Code section 4900, et seq. We agree and support the recommendations made by the Committee but also believe there should be a no-fault system of compensation that equitably spreads the cost of these cases to all the people of the State.

Please contact me at (408) 299-5902 if you have any questions or would like to discuss this.

Very truly yours,

A handwritten signature in cursive script that reads "Ann Miller Ravel". The signature is written in black ink and is positioned above the printed name.

**ANN MILLER RAVEL
County Counsel**

Attachment: Legislative Proposal

c: John Van De Kamp, Chair, CCFAJ

LEGISLATIVE PROPOSAL

NAME: Ann Miller Ravel, County Counsel **OFFICE:** Santa Clara County Counsel

PHONE NUMBER: (408) 299-5900 **DATE SUBMITTED:** October 9, 2007

NEED FOR LEGISLATION:

Penal Code section 4900 et. seq provides compensation for an individual who has been wrongfully convicted at \$100 dollars for each day of incarceration. A claimant must file a claim setting forth the grounds for recovery with the Victim's Compensation Board within six months after being released from custody. (Cal. Pen. Code §4901.)

Thereafter the Victim's Compensation Board holds a hearing. Claimant must produce evidence that the claimant is innocent of the crime the claimant was convicted of and prove the pecuniary injury sustained. (Cal. Pen. Code §4903.) The Attorney General may introduce evidence in opposition. (*Id.*) If the Victim's Compensation Board finds that claimant has proved their claim, the Board reports their findings to the Legislature with a recommendation that the Legislature make an appropriation. (*Id.* § 4904.)

The Victim's Compensation Board awards money primarily to victims of crime. Individuals who have been wrongfully convicted make up only a small part of the claimants. These funds primarily come from federal grants. The remainder comes from fines and fees paid by California criminal offenders.

The need for this legislation has come to the County's attention as a result of defending wrongful conviction lawsuits. Most recently, the County settled a case brought by Quedillas Ricardo Walker. In 1991, Lisa Hopewell was murdered in her Cupertino condominium. Rahsson Bowers and Walker were charged and later convicted of the murder. Bowers' fingerprints were at the scene and he confessed to being involved. There was no physical evidence against Walker.

Bowers took a plea deal and testified that Walker was the primary culprit. Bowers and Walker, and practically every witness that testified were heavy into the crack-cocaine culture that thrived in East Palo Alto at the time. Bowers lied. Witnesses lied. Walker was appointed an attorney who performed poorly and did not investigate witnesses who would later come forward to contradict what proved to be convincing evidence against Walker during the criminal prosecution. The sheriff deputies who investigated the case did a reasonable investigation under the difficult circumstance presented by the case and with fearful witnesses. The District Attorney's Office believed there was probable cause when it charged the case. The prosecutor was assigned a difficult and circumstantial case to try. Ultimately, impeaching testimony was presented and the jury believed the lying witnesses. Walker was convicted and

sentenced to 26 years in prison.

In June of 2003, Quedillas Ricardo Walker was released from custody after being found factually innocent by the Santa Clara County District Attorney's Association. He had spent 12 years in prison. Shortly after being released, Walker told the media that he was not bitter and did not harbor any resentment against the justice system or the district attorney's office.

Mr. Walker applied for and received \$428,000 pursuant to Penal Code Section 4900 et seq. Assembly Member Simitian and Co-Author Senator Sher introduced AB 1302 recommending an appropriation for Mr. Walker in the amount of \$428,000, which passed on September 13, 2003.

Following the award, Walker filed a federal civil rights lawsuit. Defending a lawsuit over events that occurred 14 years prior was difficult because of the significant passage of time. In this case, 3 of the 5 defendants had retired and no one had clear memory of the distant events. In other cases, it might be impossible to defend the actions civilly because witnesses might be deceased. Further, a successful defense essentially requires a retrial of the criminal prosecution, which can be extremely difficult with respect to all witnesses involved.

Even though there was significant culpability by Walker's co-defendant, witnesses, and his defense attorney in the case they were not named as defendants in the civil rights action for the obvious reason that they were insolvent. The deputies, prosecutor, and public defender were indemnified by the County and thus the only individuals named in the lawsuit. The allegations against the deputies primarily involved omissions – failure to follow up or recognize the significance of particular facts. These kinds of allegations are more persuasive with the benefit of hindsight. The allegations against the prosecution involved case development and strategy decisions. These types of allegations go to the heart of the prosecutor's discretion and likewise are easier to criticize with the benefit of hindsight. Moreover, these type of allegations are also supposed to be covered by the cloak of absolute immunity afforded to prosecutors. Unfortunately, there is extreme reluctance by the courts to grant this immunity where, as here, the District Attorney's Office admitted to errors and granted factual innocence.

The County settled this lawsuit for \$2.75 million. A significant portion of this sum (about \$1 million dollars) will go to attorney's fees and costs. Most recently, a Los Angeles jury awarded a wrongfully convicted individual \$2 million dollars after several years of litigation, several appeals, and two jury trials. The attorney fee award in that case will far exceed the jury award.

The County believes that this proposed legislation will benefit public entities, district attorneys, law enforcement officers, crime laboratory employees, and wrongfully convicted offenders alike. If the amount of recovery is increased from \$100 to \$200 for each day in jail, the wrongfully convicted offender will receive compensation

commensurate with the jury verdicts. But this recovery will come almost immediately after they are released from custody; not after years of protracted litigation. Moreover, public entities and their employees will be saved from the difficult task of defending against sometimes decade-old lawsuits.

Given the advances in DNA evidence and other scientific advances, it is expected that more convictions will be reversed. Already more than 300 people have been released on DNA evidence alone. Thus, we anticipate that the lawsuits against the County will be followed by others.

DRAFT LANGUAGE:

We recommend an addition to Penal Code section 4900 et. seq. as follows:

VERSION ONE: NO EXEMPTION

4901.5 Waiver; Exclusive Remedy

Claimant's presentation of a claim under Section 4900 serves as the exclusive remedy and, where the Legislature votes to indemnify the claimant pursuant to this Chapter, claimant waives all future claims or lawsuits against a public entity and its employees stemming out the erroneous conviction and imprisonment.

VERSION TWO: EXEMPTION

4901.5 Waiver; Exclusive Remedy; Exception

- (a) Claimant's presentation of a claim under Section 4900 serves as the exclusive remedy and, where the Legislature votes to indemnify the claimant pursuant to this Chapter, claimant waives all future claims or lawsuits against a public entity and its employees stemming out the erroneous conviction and imprisonment.
- (b) Claimant is not prevented from filing claims or lawsuits against a public employee stemming out of the erroneous conviction and imprisonment if claimant can prove that the public employee had actual knowledge that the claimant was factually innocent.
- (c) Actual knowledge of factual innocence as stated in subsection (b) requires proof of actual knowledge of claimant's innocence. Actual knowledge cannot be constructive, imputed, or inferred.

Are you familiar with any previous legislation concerning this proposal? No.

Other associations or organizations that might support this proposal: League of Cities, California State Association of Counties, Police Chiefs Association, Sheriff's Association.