



Tentative Recommendation Reform of California Grand Jury Statutes

**Capital Center for Government Law & Policy
University of the Pacific McGeorge School of Law**

**Professor J. Clark Kelso
&
Professor Michael Vitiello**

(April 18, 2001)

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Summary of Recommendations

Introduction

The grand jury is a remarkable institution. Praised by some as the “protector of the citizenry against arbitrary prosecution,”¹ the grand jury involves ordinary citizens in the administration of criminal justice, and, in California, the civil grand jury gives ordinary citizens the power to investigate local political entities to root out corruption.²

Two recent events in California’s political history serve as reminders that well designed institutions may be subject to abuse. San Diego County’s 1998-1999 grand jury publicized its investigation of then Mayor Susan Golding in which it made a groundless accusation of misconduct in connection with efforts to pass a downtown ballpark measure.³ The grand jury failed to elicit evidence from Golding; despite that, the grand jury brought no charges against Golding. Nonetheless, Golding’s political career was destroyed.⁴

¹ Susan M. Schiappa, Note, *Preserving the Autonomy and Function of the Grand Jury: United States v. Williams*, 43 CATH. U. L. REV. 311, 327-328 (1993).

² In California, the grand jury serves two functions. The first is an indicting function. As part of that function, “[t]he grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.” CAL. PEN. CODE § 917 (West 2000). The district attorney or the grand jury itself may initiate these investigations. CAL. PEN. CODE § 918 (West 2000). The second and more expansive function of the grand jury is its power to investigate into “county matters of civil concern.” CAL. PEN. CODE § 888 (West 2000). Under this heading, the grand jury has been given authority to “inquire about prisoners not indicted;” to investigate county prisons; to investigate ownership, transfer or sale of real property; to investigate county officers, departments or functions; and to investigate cities or joint powers agencies. CAL. PEN. CODE §§ 923, 924, 925, 925(a) (West 2000). After such civil investigations, the grand jury may release its findings, in the form of a final report, to the public. CAL. PEN. CODE § 929 (West 2000).

³ Todd S. Purdum, *San Diego Grand Jury is Mouse With a Roar*, THE PRESS ENTERPRISE, July 5, 1999, at A01; *Grand Jury Accuses San Diego Mayor of Improper Conduct*, THE PRESS-ENTERPRISE, June 25, 1999, at A04.

⁴ *Conspiracy Theories: Grand Jury Report Full of Unsupported Claims*, SAN DIEGO UNION-TRIBUNE, June 8, 1999, at B6; Karen Brandon, *It’s Politics, But No Strange Bedfellows Allowed: San Diego Judge Mulls Mayor’s Fate*, CHICAGO TRIBUNE, July 8, 1999, at 4.

Critics also point to indictment of Assemblyman Scott Baugh as similar evidence of the excesses of the grand jury. In 1996, Assemblyman Scott Baugh was indicted by an Orange County Grand Jury on four felony and 18 misdemeanor counts of falsifying campaign records in 1995, during a special election.⁵ An Orange County Superior Court Judge dismissed most of the indictments because the District Attorney failed to present exculpatory evidence which would have impeached the credibility of a key witness.⁶ Later, the Orange County District Attorney's Office was removed from prosecuting the case and state Attorney General Bill Lockyer forwarded the matter to the Fair Political Practices Commission "so they could determine if the campaign reporting problems merit[ed] civil fines."⁷

These and similar examples of perceived abuse of power have resulted in a call for reform of, or abandonment of, the grand jury. In 1999, when Governor Gray Davis vetoed Assembly Bill 527,⁸ he noted that "[t]he current operation of the grand jury . . . has served us well for 150 years," and "there [was] no indication that the Law Revision Commission was asked to perform a study to determine the efficacy of this legislation."⁹ In light of the Governor's veto, the University of the Pacific McGeorge School of Law's Capital Center for Government Law and Policy (the "Capital Center") decided to study potential reform of California's grand jury system.

Founded in 1995, the Capital Center (formerly known as the Institute for Legislative Practice) promotes innovative and effective government regulation and practices by providing federal, state and local policymakers with nonpartisan information and analysis. Directed by one of the co-authors (Professor Clark Kelso), the Capital Center is one of California's leading private sources of nonpartisan legal analysis of public policy issues.

In order to gain insight into the need for reform, the Capital Center invited attendance from various District Attorneys Offices, defense attorneys, county grand juries, and public interest groups for two days of "roundtable discussions" where the

⁵ Michael Greenberry, *Baugh Seeks Changes in Grand Jury System*, LOS ANGELES TIMES, January 10, 1997, at B1. *O.C. Grand Jury Indicts Baugh*, LOS ANGELES TIMES, Mar. 23, 1996, at A1.

⁶ *Id.*

⁷ Nancy Hill-Holtzman, *Grand Jury Reform Bill Expected to Be Approved Laws*, LOS ANGELES TIMES, July 12, 1999, at B1. *See also* Jean O. Pasco, *Elections Violations Cost Baugh \$47,900*, LOS ANGELES TIMES, July 28, 1999, at B1 (writing that in July of 1999, Scott Baugh agreed to pay a civil fine of \$47,900 for nine violations of the State Political Reform Act).

⁸ AB 527 provided that "any witness who is the subject of a grand jury investigation" may "have counsel present on his or her behalf while he or she is testifying." The bill also forbade counsel from objecting to questions or even speaking to the grand jury, from revealing anything heard inside the grand jury room, and from representing more than one witness in the same proceeding. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 527, (July 13, 1999) at 2-4.

⁹ Governor's Veto Message, Aug. 16, 1999.

authors of this report solicited views on the merits of the grand jury system. A number of individuals and organizations attended those discussions and offered important insight into the grand jury system.¹⁰

Based on that meeting and our own research, we prepared a background paper, *Grand Jury Background Study*, which is available on the Capital Center's website at www.mcgeorge.edu. That background paper reviews the civil oversight role of the grand jury, focuses upon a few issues relating to its role in the criminal justice system, most particularly upon former Assemblyman Scott Baugh's proposed legislation,¹¹ and discusses concerns about the lack of diversity among members of the grand jury.

The recommendations contained in this Tentative Recommendation are grounded in our background paper and our roundtable discussion. In this summary of our recommendations, we describe (1) proposed structural changes in the statutes which are intended to clarify the grand jury's civil and criminal functions, (2) proposed increases in grand juror fees and traveling expenses, (3) proposed changes to reflect county funding responsibilities under the trial court funding act, (4) proposed creation of a grand juror training pilot project, and (5) proposed adoption of Assemblyman Baugh's bill granting a grand jury witness who is also a target of the grand jury investigation a right to have counsel present in the grand jury room while the target is testifying.

Appendix A contains draft legislation to recodify California's grand jury statutes in a newly-enacted Title 8.5 of the Government Code. In addition to the changes described above, we have corrected certain errors in the existing statutes and clarified archaic or dated references. These changes are noted in the comments which follow each section in the Appendix. We have also revised the statutes to be gender neutral.

We invite interested persons to submit comments to us on the background paper and this Tentative Recommendation. Comments should be sent to:

Professor J. Clark Kelso
Capital Center for Government Law & Policy

¹⁰ Attendees included: Jack Zepp, Director California Grand Jurors Association; Dan Taranto, former President and Director California Grand Jurors Association; Sherry Chesny, Board of Directors California Grand Jurors Association; Clif Poole, Solano County Grand Jury; Gloria Gomez, Director of Jury Services, Superior Court of Los Angeles County; Bill Larsen, Special Assistant District Attorney, Grand Jury Advisor (also representing the California District Attorneys Association); Dave Harris, Stanislaus County District Attorneys Office; Roy Hubert, Stanislaus County District Attorneys Office; Ron Cheek, San Joaquin County Grand Jury; Jim Paige, San Joaquin County Grand Jury; Chris Wing, Criminal Defense Attorney, Clark Kelso, Director, Capital Center for Government Law and Policy; Michael Vitiello, Professor, University of the Pacific McGeorge School of Law.

¹¹ In 1997 and again in 1999, State Assemblyman Scott Baugh proposed legislation which would alter the procedures of the criminal grand jury to allow for the presence of witnesses' counsel inside the grand jury room. Under the current system, witnesses must consult with their attorneys outside of the grand jury room. Nancy Hill-Holtzman, *supra* note 7; Jean O. Pasco, *supra* note 7.

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Comments should be received no later than July 1, 2001. We plan to issue a Final Recommendation around July 30, 2001. If you have questions about our process or the Tentative Recommendation, please contact Clark Kelso at (916) 739-7104 or ckelso@uop.edu.

Structural Changes

Relocation of Statutes from Penal Code to Government Code

The current version of the grand jury statutes was substantially re-codified in 1959 and appears in the Penal Code as Title 4 (“Grand Jury Proceedings”) of Part 2 (“Of Criminal Procedure”) at Sections 888 through 939.91. Cal. Stats., 1959, ch. 501. Since that time, there have been a variety of amendments to the grand jury statutes, but no systematic review or clean-up has been undertaken.

The location of the grand jury statutes in the Penal Code was apparently justified by the indictment function performed by the grand jury. Although the grand jury retains the power of indictment, because of changes in criminal procedure, district attorneys more commonly commence criminal proceedings using the preliminary hearing process. Thus, many grand juries spend much more of their time performing their civil oversight and watchdog functions than investigating crimes.

Recognizing that the grand jury performs both civil and criminal functions, and that its civil functions are likely to predominate in many counties, we recommend moving the grand jury statutes out of the Penal Code and relocating them in the Government Code as Sections 77800 through 77973 in a new Title 8.5 entitled “Grand Jury.” This relocation of the grand jury statutes will help highlight the grand jury’s important civil oversight and watchdog role and will establish the grand jury in the Government Code as a local governmental entity.

Clarification of Civil and Criminal Functions

It appears that in some counties, the grand jury’s civil role can be significantly undermined if the same grand jury is used for investigations leading to indictments. Under current law, a county may have two grand juries, the regular grand jury and an additional grand jury which may be established primarily to handle criminal cases. *See* Penal Code § 904.6. In counties which employ the additional grand jury for criminal matters, the regular grand jury can continue its civil investigations uninterrupted.

In light of the importance of the grand jury's civil oversight and watchdog role and the substantial amount of time which must be devoted to that function if it is to be truly effective, we recommend that a regular grand jury established pursuant to Article 3 (*see* Sections 77840-77847) have power to fulfill the grand jury's governmental oversight functions, but be *denied* the power to issue indictments. Pursuant to Section 77822, the court will have the power to establish a separate grand jury with the power of indictment, and Section 77822 *requires* the court to establish such a grand jury on the request of the district attorney or Attorney General.

In addition to preserving the regular grand jury for civil functions, our proposal ensures that the process used to select grand jurors will be appropriate for the type of function which it performs. Under existing law, which we adopt in Article 3, there is a great deal of flexibility in choosing grand jurors. The jury commissioner makes a preliminary list of names for consideration by the court. *See* Section 77843. The court then may choose names from that list, may choose other persons from the county not on that list, or may select persons who served on last year's grand jury. *See* Sections 77843-77845. This type of flexibility is important when trying to constitute a grand jury with sufficient expertise and diversity to perform the difficult task of governmental oversight.

However, a selection process that permits such individual tailoring may not satisfy constitutional requirements that a grand jury with power to issue indictments be representative of a cross-section of the community. In order to constitute a broadly representative grand jury, a more random selection process, such as that used to select trial jurors, is more appropriate. Under current law, which we adopt in Section 77850, grand jurors for a criminal grand jury are selected from the list of trial jurors in civil and criminal cases. *See* Section 77850.

If our recommendation is adopted, a clear distinction will be drawn between the civil and criminal grand jury, and there would be no possibility that a non-representative civil grand jury could issue indictments. We believe that if a district attorney desires to use the grand jury for criminal indictments, a separate grand jury, whose members are selected to be representative of a cross-section of the community, should be impaneled.

Recognizing that our recommendation may lead to hardship in some counties (either because of the difficulty of impaneling even one grand jury or because of lack of facilities to accommodate two grand juries), we provide in Section 77823 that a regular grand jury may be established with power to issue indictments, thereby combining civil and criminal functions, but only if the process for selecting that regular grand jury conforms to the process for selecting a criminal grand jury.

As a purely technical matter, we have reorganized the statutes dealing with scope

and conduct of investigations to separate the civil from the criminal provisions. Under current law, purely criminal provisions are sprinkled throughout the grand jury statutes. We recommend restructuring the statutes to clarify the distinctions between civil and criminal functions. In our recommendation, Chapter 4 (Sections 77880-77934) deals with the powers and duties of the regular grand jury, and Chapter 5 (Sections 77940-77973) deals with the additional powers and duties of the criminal grand jury.

Grand Juror Fees

Under current law, grand jurors receive \$10 per day for each day's attendance and fifteen cents per mile, in going only, for each mile actually traveled in attending court as a grand juror. The fifteen cents per mile figure dates to the 1959 codification of the grand jury statutes, and the \$10 per day figure dates to 1971 (when the fee was increased from \$5 per day). *See* Cal.Stats., 1959, ch. 501; Cal.Stats., 1971, ch. 1540. Given the important services provided by grand jurors, these figures are unacceptably low. For the same reasons set forth in its report for increasing the fees for trial jurors, we join the Blue Ribbon Commission on Jury System Improvement in recommending an increase in daily fees to \$40 and an increase in mileage to twenty-nine cents per mile. *See* J. Clark Kelso, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, 47 Hastings L.J. 1433, 1468-1471 (1996).

Responsibility for Funding Grand Jury Expenses

In a number of sections, the current grand jury statutes purport to allocate grand jury expenses to the court or to the county. *See, e.g.*, Penal Code §§ 914 (training expenses); 938.4 (expenses for meeting room). These provisions are obsolete in view of the Lockyer-Isenberg Trial Court Funding Act of 1997 and associated Rules of Court, which generally make grand jury expenses a county responsibility. *See* Gov't Code § 77200; Rules of Court 810(d), Function 2. We recommend modifying the provisions to reflect the current state of trial court funding.

Grand Juror Training Pilot Project

A substantial portion of our background study discusses problems associated with training grand jurors to perform their civil oversight functions. *See Grand Jury Background Study*, Chapter 1, Part VI. Legislation enacted in 1997 expanded the court's duty to instruct the grand jury to include providing "training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority." Penal Code § 914(b). Counties are responsible for bearing the expense of this training. Training efforts vary substantially from county to county, and many grand jurors are spending their own money to attend training programs at remote locations. Some of the training that is being provided is, as noted by an active member of

the California Grand Jurors' Association, more of an orientation than true training.

In preparing our background study, we interviewed Glenn Fait, the Director of the University of the Pacific McGeorge School of Law's Institute for Administrative Justice ("IAJ"). For years, IAJ has run highly successful training programs for federal and state agencies. For example, IAJ runs training programs for the Special Education Hearing Office, which IAJ runs under contract with the California Department of Education, and for the Social Security Administration.

The key to IAJ's teaching methodology is simulation and hands-on experience where there can be quick feedback from professional instructors. Unlike current grand jury training programs, a well funded program would train grand jurors to conduct interviews, examine witnesses and write reports through extensive simulations.

Such a program would not be cheap to run. Providing training for every grand juror statewide would probably cost over a million dollars a year. This is based upon the number of grand jurors per year to be trained (approximately 1,100), and training costs of approximately \$1,000 for a full week of training.

It is unlikely that very many counties could afford the expense of this type of program, and this suggests the possibility of state funding for grand juror training. However, grand jury funding is generally a county responsibility, and it seems unwise to commit the state to such a significant annual cost before knowing the efficacy of such a training program. Therefore, we recommend that the Legislature authorize and fund a pilot project on grand juror training. As set forth in Section 77881.5, the pilot project, which would be the responsibility of the Department of Justice, would encompass developing a civil grand jury curriculum, offering free training to a limited number of grand jurors based on the curriculum, and evaluating the curriculum and training program in a report to be delivered to the Legislature in 2004. We estimate the costs of this pilot project to be approximately \$300,000. In addition to testing the feasibility of offering such a program in subsequent years, a significant benefit of this pilot project will be the development of a high-quality curriculum that can be used by others irrespective of future state funding.

Right to Counsel in Criminal Grand Jury Investigations

The Capital Center's interest in grand jury reform was triggered in part by Governor Davis' veto of former Assemblyman Scott Baugh's proposal (AB 527) to give witnesses who were targets of criminal grand jury investigations a right to have counsel present while the witness was testifying. We analyze this question in great detail in our background study. *See Grand Jury Background Study*, Chapter 2.

Based on our study of the issue, we conclude that AB 527 represented a measured response to a serious problem. AB 527 would not have expanded a target's right to refuse to testify or to consult with an attorney to assure that the target does not inadvertently waive a right or privilege. Rather, it would only have made a relatively minor change by allowing counsel in the grand jury room during the target's testimony, rather than forcing counsel to wait in the hallway outside the grand jury room. It created reasonable exceptions to its right to counsel, and it would have prevented disruption by counsel by carefully circumscribing counsel's role.

We also recommend a significant change to AB 527. AB 527 specifically attempted to limit the right to counsel to targets who could afford counsel. We believe that limitation is unwarranted. Sound policy justifies creating a limited right to counsel before the grand jury. Counsel has a role in assuring that a target is not cajoled, tricked or coerced into giving up constitutional rights or other privileges; counsel has a role in assuring that a target make proper invocation of such rights and privileges; counsel may also encourage some targets to testify, offering the grand jury a fuller understanding of the facts than it might otherwise have available, thereby increasing its ability to exercise independent judgment whether to indict. If these benefits justify creation of the right to counsel, it is difficult to see how we can deny the same right to counsel to indigent targets. Wealth should not determine whether a target receives a fair hearing before a grand jury. We therefore recommend that, if an indigent target so requests, counsel be appointed by the court to assist the target in testifying before a grand jury.

Appendix A

Proposed Amendments to California's Grand Jury Statutes

We propose enacting a new Title 8.5 ("Grand Jury") in the Government Code as follows:

GOVERNMENT CODE

TITLE 8.5. GRAND JURY

CHAPTER 1. DEFINITIONS

CHAPTER 2. GENERAL PROVISIONS

CHAPTER 3. FORMATION OF GRAND JURY

Article 1. General Provisions

Article 2. Qualifications of Grand Jurors

Article 3. Selection of Jurors for Regular Grand Jury

Article 4. Selection of Jurors for Criminal Grand Jury

Article 5. Impaneling of Grand Jury

CHAPTER 4. POWERS AND DUTIES OF GRAND JURY

Article 1. General Provisions

Article 2. Scope of Investigations

Article 3. Conduct of Investigations

Article 4. Legal and Other Assistants for Grand Jury

Article 5. Reports and Responses

CHAPTER 5. ADDITIONAL POWERS AND DUTIES OF CRIMINAL GRAND JURY

Article 1. General Provisions

Article 2. Scope of Investigations

Article 3. Conduct of Investigations

TITLE 8.5. GRAND JURY

CHAPTER 1. DEFINITIONS

§ 77800. Scope of Definitions

77800. The definitions in this chapter apply to this title.

Comment. Section 77800 specifies the scope of the definitions contained in Chapter 1.

§ 77801. "Grand jury"

77801. "Grand jury" means a body of the required number of persons returned from the citizens of the county before the superior court of the county, and charged and

sworn to investigate or inquire into county matters of civil concern or to inquire of public offenses committed or triable within the county.

Comment. Derivation: Penal Code § 888.

Section 77801 defines the grand jury as a body of a defined number of persons who are charged and sworn to investigate matters of civil concern or to inquire of criminal offenses.

§ 77802. “Required number”

77802. "Required number" means:

(a) Twenty-three in a county having a population exceeding 4,000,000.

(b) Eleven in a county having a population of 20,000 or less, upon the approval of the board of supervisors.

(c) Nineteen in all other counties.

For purposes of this section, the population of a county shall be based upon the annual population estimates made by the Department of Finance pursuant to Section 13073.5.

Comment. Derivation: Penal Code § 888.2.

Section 77802 defines the size of a grand jury where the size depends upon the population within a county. The final paragraph is new language which clarifies the mechanism by which population will be determined.

§ 77803. “Public offense”

77803. “Public offense” means a crime or public offense as defined in Section 15 of the Penal Code.

Comment: Derivation: None.

Section 77803 incorporates the definition of “public offense” set forth in Section 15 of the Penal Code.

§ 77804. “Indictment”

77804. “Indictment” means an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.

Comment: Derivation: None.

Section 77804 defines “indictment.”

CHAPTER 2. GENERAL PROVISIONS

§ 77811. Grand juror fees

77811. Unless a higher fee or rate of mileage is otherwise provided by statute or county or city and county ordinance, the fees for grand jurors are forty dollars (\$40) a day for each day's attendance as a grand juror, and twenty-nine cents (\$0.29) a mile, in going only, for each mile actually traveled in attending court as a grand juror.

Comment: Derivation: Penal Code § 890.

Section 77811 increases the grand juror fees set by Penal Code § 890 from \$10 for attendance to \$40 for attendance, and from fifteen cents to twenty-nine cents per mile for going to court. These increases are in conformity with the recommendation for petit jury fees made by the Blue Ribbon Commission on Jury System Improvement. *See* J. Clark Kelso, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, 47 Hastings L.J. 1433, 1468-1471 (1996).

§ 77812. Payment of fees by county

77812. The per diem and mileage of grand jurors where allowed by law shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor upon the written order of the judge of the superior court of the county.

Comment. Derivation: Penal Code § 890.1.

Section 77812 sets forth the mechanism by which per diem and mileage of grand jurors is paid by the county. Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and associated Rules of Court, grand jury expenses are generally borne by the county. *See* Gov't Code § 77200; Rules of Court 810(d) (Function 2) (“Civil and criminal grand jury costs (unallowable)”). Rule 810(d), Function 2, provides that “juror expenses of per diem fees and mileage” should be included as a court operations expense, and therefore a state responsibility. However, it appears from its drafting that references to “jurors” and “juries” in Function 2 include *only* trial jurors and juries (e.g., “meals and lodging for sequestered jurors”), and that when the drafters intended to encompass grand jurors or grand juries, they did so expressly.

§ 77813. Unauthorized recording, listening or observing proceedings

77813. Every person who, by any means whatsoever, willfully and knowingly, and without consent of the grand jury, records, listens to or observes, or attempts to record, listen to or observe, the proceedings of a grand jury of which he is not a member while the grand jury is deliberating or voting is guilty of a misdemeanor.

Comment: Derivation: Penal Code § 891.

Section 77813 makes it a misdemeanor for someone other than a member of a grand jury to record, listen to or observe grand jury proceedings, or to attempt to do so. The predecessor statute, Penal Code § 891, included the following language: “This section is not intended to prohibit the taking of notes by a grand juror in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.” This language has been removed as surplusage. The section applies only to an eavesdropper who “is not a member” of the grand jury. The

section therefore cannot apply to a grand juror who takes notes or otherwise records grand jury proceedings for his or her own benefit.

§ 77814. Meeting rooms for grand jury

77814. The superior court shall arrange for a suitable meeting room and other support as the court determines is necessary for the grand jury.

Comment: Derivation: Penal Code § 938.4.

Penal Code § 938.4 provided, in addition to the language in Section 77814, that “any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.” This language, added in 1997 by chapter 443, has been superseded by the Lockyer-Isenberg Trial Court Funding Act of 1997 (ch. 850) and associated Rules of Court which make grand jury expenses the responsibility of the county, except those expenses associated with the selection of grand jurors. *See* Gov’t Code § 77200; Rules of Court 810(d) (Function 2). Accordingly, Section 77814 does include this now obsolete allocation of costs to the court or county.

CHAPTER 3. FORMATION OF GRAND JURY

ARTICLE 1. GENERAL PROVISIONS

§ 77820. Annual drawing

77820. In all counties there shall be at least one regular grand jury drawn and impaneled in each year pursuant to Article 3 (commencing with Section 77840).

Comment: Derivation: Penal Code § 905.

Section 77820 implements the constitutional requirement that “a grand jury shall be drawn and summoned at least once a year in each county.” Cal. Const., art. I, § 23.

§ 77821. Attorney general demand to impanel

77821. If a regular grand jury is not in existence, the Attorney General may demand the impaneling of a grand jury by those charged with the duty to do so, and upon such demand, it shall be their duty to do so.

Comment: Derivation: Penal Code § 913.

Section 77821 provides a mechanism for the Attorney General to ensure compliance with Section 77820 if, for any reason, the superior court of a county fails to appoint a grand jury pursuant to Article 3.

§ 77822. Demand to impanel criminal grand jury

77822. The presiding judge of the superior court may order and direct the impanelment, at any time, of a grand jury with power to issue indictments. When

requested by the Attorney General or the District Attorney of the county or city and county, the presiding judge of the superior court shall order and direct the impanelment of a grand jury with power to issue indictments. In no event shall more than one grand jury with power to issue indictments be impaneled at the same time.

Comment: Derivation: Penal Code § 904.6.

In *McClatchy Newspapers v. Superior Court of Fresno County*, 13 344 Cal.3d 1162 (1988), the court explained that grand juries perform three basic functions: “to weigh criminal charges and determine whether indictments should be returned; to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office; and to act as the public’s ‘watchdog’ by investigating and reporting on the affairs of local government.” *Id.*, 44 Cal.3d at 1170. Under existing law, all three functions can be performed by a single grand jury. In practice, however, the combination of functions can create difficulties. First, existing law does not guarantee that membership on a grand jury will be truly representative of a cross section of the community, particularly since the public can self-nominate for membership and members can simply be hand-selected by judges. Second, requiring a civil grand jury to spend time on criminal matters, which when they arise have priority, is likely to deprive the grand jury of the time it needs to perform its governmental oversight role.

Accordingly, we recommend that the criminal functions of a grand jury be generally separated from its governmental oversight function. Under our proposal, the regular grand jury established pursuant to Article 3 has power to fulfill the governmental oversight functions (i.e., allegations of misconduct by public officials and public watchdog), but does *not* have the power to issue indictments. Section 77822 authorizes the court to establish a separate grand jury with the power of indictment, and requires the court to establish a criminal grand jury upon the request of the District Attorney or the Attorney General. The selection process for a criminal grand jury ensures that the process is unbiased and is likely to result in a representative cross section of the community (*see* Section 77850).

§ 77823. Combined grand jury

77823. A regular grand jury may be established with power to issue indictments; provided, however, that the process of selecting grand jurors for such a grand jury must comply with the requirements of subdivision (b) of Section 77850.

Comment: Derivation: None.

Section 77823 permits a county to create a single grand jury with both civil investigatory and criminal responsibilities. However, in order to ensure that a combined grand jury satisfies constitutional requirements of representativeness, Section 77823 requires that the selection process for a

combined grand jury satisfy the requirements of subdivision (b) of Section 77850 which, among other things, provides that “[a]ll persons selected for the grand jury pursuant to this article shall be selected *at random* from a source or sources *reasonably representative of a cross section* of the population which is eligible for jury service in the county” (emphasis added). Compare Sections 77843 & 77844 (authorizing judges to select grand jurors from list prepared by the jury commissioner or to select from among the body of persons in the county regardless of the list prepared by the jury commissioner).

ARTICLE 2. QUALIFICATIONS OF GRAND JURORS

§ 77830. Competency of grand jurors

77830. (a) A person must possess each of the following qualifications to be competent to act as a grand juror:

(1) Be a citizen of the United States of the age of 18 years or older who shall have been a resident of the state and of the county or city and county for one year immediately before being selected and returned.

(2) Be in possession of his or her natural faculties, of ordinary intelligence, of sound judgment, and of fair character.

(3) Have sufficient knowledge of the English language.

(b) A person is not competent to act as a grand juror if any of the following apply:

(1) The person is serving as a trial juror in any court of this state.

(2) The person has been discharged as a grand juror in any court of this state within one year.

(3) The person has been convicted of malfeasance in office or any felony or other high crime.

(4) The person is serving as an elected public officer.

Comment: Derivation: Penal Code § 893.

Section 77830 sets forth the qualifications for service as a grand juror in the same terms as set forth in the predecessor statute, Penal Code § 893. Subdivisions (a)(1)-(3) have been modified slightly to improve clarity and structural parallelism. No substantive change is intended.

§ 77831. Exemptions and excuses

77831. Sections 204, 218, and 219 of the Code of Civil Procedure specify the exemptions and the excuses which relieve a person from serving as a grand juror.

Comment: Derivation: Penal Code § 894.

Section 77831 incorporates by reference the exemptions and excuses which relieve a person from serving on a trial jury. Section 204 of the Code of Civil Procedure provides as follows:

“(a) No eligible person shall be exempt from service as a trial

juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b).

(b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council.”

Section 218 provides the procedure by which the jury commissioner may hear and decide excuses. Section 219 provides, in pertinent part, that certain types of peace officers are exempt from civil and criminal trial juries.

ARTICLE 3. SELECTION OF JURORS FOR REGULAR GRAND JURY

§ 77840. Rules or instructions for furnishing grand jury lists

77840. A majority of the judges of the superior court shall adopt rules or instructions as may be necessary for the guidance of the jury commissioner in furnishing lists of persons who are qualified to serve on the grand jury. The rules or instructions shall specify whether names for the grand jury shall be selected from supervisory districts of the county in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the list, or from the county at large.

Comment: Derivation: Penal Code §§ 899 & 903.1.

Section 77840 provides for local rules or instructions to guide the jury commissioner in creating a list of persons qualified to be grand jurors. Penal Code § 899 provided that the names “shall be selected from the different wards, judicial districts, or supervisory districts” of the counties, and that in Los Angeles, the names could be selected from “the county at large.” The reference to “wards” is archaic, and the reference to “judicial districts” is essentially obsolete in light of trial court unification. We propose dropping these obsolete references, leaving the choice for all counties between selecting names by supervisory district or at large. The advantage of selecting names by supervisory district is that it ensures a certain amount of geographic diversity in the pool of potential grand jurors. On the other hand, selecting from the county at large is likely to be administratively more convenient and, assuming a random draw, is likely to result in representation proportional to population density within the county.

§ 77841. Furnishing grand jury lists

77841. The jury commissioner shall furnish the judges of the court annually a list of persons qualified to serve as grand jurors during the ensuing fiscal year of the county, or until a new list of jurors is required. The grand jury list shall be kept separate and

distinct from the trial jury list.

Comment: Derivation: Penal Code § 903.1.

Section 77841 requires the jury commissioner to provide a list of potential grand jurors, separate from the trial jury list, on an annual basis.

§ 77842. Inquiry into qualifications

77842. The jury commissioner shall diligently inquire and inform himself or herself in respect to the qualifications of persons resident in his county who may be summoned for grand jury duty. The jury commissioner may require any person to answer, under oath to be administered by the jury commissioner, any question regarding the person's name, age, residence, occupation, and qualifications to be a grand juror, and also any questions as to similar matters concerning others of whose qualifications for grand jury duty the person has knowledge.

The jury commissioner and his or her assistants shall have power to administer oaths for the purposes of this article and shall be allowed actual traveling expenses incurred in the performance of their duties. Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.

Comment: Derivation: Penal Code § 903.2.

Section 77842 authorizes the jury commissioner and his or her assistants to examine the qualifications of potential grand jurors. Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and associated Rules of Court, grand jury expenses are generally borne by the county. *See* Gov't Code § 77200; Rules of Court 810(d) (Function 2) ("Civil and criminal grand jury costs (unallowable)"). Rule 810(d), Function 2, provides that "salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)" should be included as a court operations expense, and therefore a state responsibility. However, the provision in Section 77842 for travel expenses to be paid by the county does *not* affect a salary, wage or benefit of the jury commissioner or staff and is therefore not encompassed by Function 2. The parenthetical reference to "selection of grand jury" in Function 2 is instead intended only to address the allocation problem that a jury commissioner receives a single salary for performing services both for trial juries and grand juries. Because of the parenthetical, the jury commissioner does not need to estimate the time he or she spends on these two different functions and, to that extent, the state subsidizes grand jury related expenses.

§ 77843. Selection of grand jurors

77843. The jury commissioner shall return to the judges of the superior court the list of persons recommended for grand jury duty. The judges shall examine the jury list, and from that list, a majority of the judges may select, to serve as grand jurors in the superior court of the county during the ensuing year or until a new list of jurors is

required, those persons who, in their opinion, should be selected for grand jury duty. The persons so selected shall, in the opinion of the judges selecting them, be persons suitable and competent to serve as jurors, as required by law.

Comment: Derivation: Penal Code § 903.3.

Section 77843 requires the jury commissioner to provide the judges with a list of names from which the judges can select members to serve on the grand jury.

§ 77844. Selection of names not on lists

77844. The judges are not required to select any names from the list returned by the jury commissioner pursuant to Section 77843, but may, if in their judgment the due administration of justice requires, make all or any selections from among the body of persons in the county suitable and competent to serve as grand jurors regardless of the list returned by the jury commissioner.

Comment: Derivation: Penal Code § 903.4.

Consistent with historic practice, Section 77844 authorizes the judges to select persons for the grand jury who were *not* on the list created by the jury commissioner. In order to ensure the integrity and independence of the grand jury, Section 77844 should be used only infrequently and in extraordinary circumstances.

§ 77845. Regular grand jurors

77845. (a) The persons whose names are selected pursuant to Sections 77843 and 77844 shall be known as regular grand jurors, and shall serve for one year and until other persons are selected.

(b) If the superior court so decides, the presiding judge may name up to 10 regular grand jurors not previously so named, who served on the previous grand jury and who so consent, to serve for a second year.

(c) The court may also decide to select grand jurors pursuant to Section 77846.

Comment: Derivation: Penal Code § 901.

Subdivision (a) of Section 77845 sets a one-year term of service. Subdivision (b) permits the presiding judge to reappoint hold-over jurors from the prior grand jury in order to provide greater continuity between grand juries. Subdivision (c) authorizes the use of staggered terms pursuant to Section 77846.

§ 77846. Selection of grand jurors for staggered terms

77846. (a) Upon the decision of the superior court pursuant to Section 77845 to adopt this method of selecting grand jurors, when the required number of persons have been impaneled as the grand jury pursuant to law, the clerk shall write the names of each such person on separate ballots. The clerk shall fold the ballots so that the names cannot be seen, place them in a box, and draw out half of such ballots, or in a county where the

number of grand jurors is uneven, one more than half. The persons whose names are on the ballots so drawn shall serve for 12 months until July 1 of the following year. The persons whose names are not on the ballots so drawn shall serve for six months until January 1 of the following year.

(b) Each subsequent year, on January 2 and July 2, a sufficient number of grand jurors shall be impaneled to replace those whose service concluded the previous day. Those persons impaneled on January 2, shall serve until January 1 of the following year. Those persons impaneled on July 2, shall serve until July 1 of the following year. No person shall serve on the grand jury for more than one year.

Comment: Derivation: Penal Code § 908.2.

Section 77846 authorizes staggered terms for grand jurors. The use of staggered terms can improve continuity between grand juries, although there is a trade-off in having half of the grand jury be replaced every six months, which may interfere with ongoing investigations.

§ 77847. Service during fiscal or calendar year

77847. (a) Except as otherwise provided in subdivision (b), a grand jury the members of which are selected pursuant to this article shall be impaneled and serve during the fiscal year of the county in the manner provided in this chapter.

(b) The board of supervisors of a county may provide that the grand jury shall be impaneled and serve during the calendar year. The board of supervisors shall provide for an appropriate transition from fiscal year term to calendar year term or from calendar year term to fiscal year term for the grand jury. The provisions of subdivisions (a) and (b) of Section 77845 shall not be deemed a limitation on any appropriate transition provisions as determined by resolution or ordinance; and, except as otherwise provided in this chapter, no transition grand jury shall serve more than 18 months.

Comment: Derivation: Penal Code § 905.5.

Subdivision (a) of 77847 requires the term of service to match the fiscal year of the county. Subdivision (b) of Section 77847 authorizes the board of supervisors to change the term of service to match the calendar year.

ARTICLE 4. SELECTION OF JURORS FOR CRIMINAL GRAND JURY

§ 77850. Selection of grand jurors

77850. (a) The presiding judge shall select a sufficient number of qualified persons, at random, from the list of trial jurors in civil and criminal cases to constitute a grand jury with power to issue indictments.

(b) It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned

for that purpose. All persons selected for the grand jury pursuant to this article shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county.

Comment: Derivation: Penal Code § 904.6.

Section 77850 provides the mechanism for selecting potential grand jurors for a grand jury that will have the power to issue indictments. In order to ensure a representative cross-section of the community, subdivision (a) requires that these grand jurors be selected randomly from the list of trial jurors in civil and criminal cases.

§ 77851. Term of service

77851. A grand jury the members of which are selected pursuant to this article may serve for a period of one year from the date of impanelment, but may be discharged at any time within the one-year period by order of the presiding judge.

Comment: Derivation: Penal Code § 904.6.

Section 77851 provides that the ordinary term of service of a criminal grand jury is one year from the date of impanelment. Under this statute, a county may decide to create a criminal grand jury only when necessary (which may be infrequently), and to accommodate this flexibility, Section 77851 provides that a criminal grand jury may be discharged at any time by order of the presiding judge.

ARTICLE 5. IMPANELING OF GRAND JURY

§ 77853. Impaneling of grand jury

77853. A grand jury shall be impaneled when its membership has been selected and accepted pursuant to Section 77856, the members of the grand jury have taken the oath provided in Section 77859, and the court has appointed the foreperson pursuant to Section 77860. A grand jury shall have the power to issue indictments if and only if all of its members have been selected pursuant to the procedures set forth in Article 4, subdivision (c) of Section 77856, or Section 77861.

Comment: Derivation: None.

Section 77853 sets forth the steps required to impanel a grand jury: to wit, selection and acceptance (Section 77856), taking the oath (Section 77859), and appointment of the foreperson (Section 77860). Section 77853 also empowers the grand jury to issue indictments, but only if all of its members have been selection pursuant to identified procedures which guarantee representation by a fair cross section of the community.

§ 77854. Drawing and summoning

77854. When ordered by the superior court, the names of grand jurors shall be drawn, at random, from the names of persons selected as regular grand jurors pursuant to

Sections 77843 and 77844, or, in the case of a grand jury with power to issue indictments, from the names of persons selected as grand jurors pursuant to Section 77850. The names shall be drawn, and the list of names certified and summoned, as is provided for drawing and summoning trial jurors. The names of any persons drawn who are subsequently impaneled upon the grand jury shall be removed from the list of persons selected as grand jurors; the names of any persons drawn who are not impaneled upon the grand jury shall remain on the list of persons selected as grand jurors.

Comment: Derivation: Penal Code § 904.6.

Section 77854 provides the mechanism by which grand jurors selected pursuant to Articles 3 and 4 are ultimately chosen for service on a grand jury.

§ 77855. Failure to obey summons

77855. Any grand juror summoned, who willfully and without reasonable excuse fails to attend, may be attached and compelled to attend and the court may also impose a fine not exceeding fifty dollars (\$50), upon which execution may issue. If the grand juror was not personally served, the fine shall not be imposed until upon an order to show cause an opportunity has been offered the grand juror to be heard.

Comment: Derivation: Penal Code § 907.

Section 77855 provides a penalty for failure to respond to a summons to serve on a grand jury.

§ 77856. Selection of members to serve on grand jury

77856. (a) If the required number of the persons summoned as grand jurors are present and not excused, such required number shall constitute the grand jury.

(b) If more than the required number of the persons summoned as grand jurors are present, the clerk shall write their names on separate ballots, which shall be folded so that the names cannot be seen, place the ballots in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(c) If less than the required number of the persons summoned as grand jurors are present, the panel may be filled by the presiding judge, who shall select a sufficient number of qualified persons, at random, from the list of trial jurors in civil and criminal cases to constitute the grand jury. The persons so selected shall be summoned as is provided for summoning trial jurors. If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as provided in subdivision (b).

Comment: Derivation: Penal Code § 908.

Section 77856 sets forth the process of impaneling the grand jury and contains procedures for randomly selecting the grand jury if more than the required number of persons summoned appear and for summoning

additional persons if less than the required number of persons summoned appear.

Penal Code § 908 contained an incorrect and obsolete cross-reference to C.C.P. § 226 to be used in cases when too few persons appeared, a problem dealt with by subdivision (c) in Section 77856. Subdivision (c) is drafted so that the same processes used to select a criminal grand jury (i.e., recourse to the list of trial jurors for civil and criminal cases) will be used by the court to complete the grand jury.

§ 77857. Acceptance of jurors

77857. Before accepting a person drawn as a grand juror, the court shall be satisfied that such person is duly qualified to act as a grand juror. When a person is drawn and found qualified he or she shall be accepted unless the court, on the application of the juror and before being sworn, excuses the juror from service for any of the reasons prescribed in Section 77831.

Comment: Derivation: Penal Code § 909.

Section 77857 ensures that all persons ultimately sworn in as grand jurors will be qualified to sit and gives each juror a final opportunity to be excused from service.

§ 77858. Challenges

77858. No challenge shall be made or allowed to the panel from which the grand jury is drawn, nor to an individual grand juror, except when made by the court for want of qualification as provided in Section 77857.

Comment: Derivation: Penal Code § 910.

Section 77858 proscribes challenges to the panel from which the grand jury is drawn

§ 77859. Oath

77859. (a) The following oath shall be taken by each member of a regular grand jury: "I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently investigate and inquire into all county matters of civil concern. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, nor the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court."

(b) The following oath shall be taken by each member of a grand jury with power to issue indictments: "I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this state, committed or triable within this county, of which

the grand jury shall have or can obtain legal evidence and of all county matters of civil concern. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, nor the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court."

Comment: Derivation: Penal Code § 911.

Section 77859 contains two versions of the oath. The oath in subdivision (a) is for the regular grand jury, while the oath in subdivision (b) is modified for a grand jury which has the power to issue indictments.

§ 77860. Appointment of foreperson

77860. From the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreperson. The court shall also appoint a foreperson when the person already appointed is excused or discharged before the grand jury is dismissed.

Comment: Derivation: Penal Code § 912.

Section 77860 provides for the appointment of the foreperson by the court.

§ 77861. Filling of vacancies

77861. When, after the grand jury consisting of the required number of persons has been impaneled, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the clerk of the superior court in the same manner as members of the grand jury were originally selected. No person selected as a grand juror to fill a vacancy pursuant to this section shall vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of his or her selection.

Comment: Derivation: Penal Code § 908.1.

Section 77861 provides a mechanism for filling vacancies in a grand jury.

CHAPTER 4. POWERS AND DUTIES OF GRAND JURY

ARTICLE 1. GENERAL PROVISIONS

§ 77880. Charge by court

77880. (a) When a grand jury is established, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

(b) When a grand jury is impaneled, for purposes which include the investigation of, or inquiry into, county matters of civil concern, the judge of the superior court of the county, in addition to other matters requiring action, shall call its attention to the

provisions of Chapter 1 (commencing with Section 23000) of Division 1 of Title 3, and Sections 24054 and 26525 of the Government Code, and instruct it to ascertain by a careful and diligent investigation whether such provisions have been complied with, and to note the result of such investigation in its report. At such time the judge shall also inform and charge the grand jury especially as to its powers, duties, and responsibilities under this chapter, Article 3 (commencing with Section 3060) of Chapter 7 of Division 4 of Title 1 of the Government Code, and Section 17006 of the Welfare and Institutions Code.

Comment: Derivation: Penal Code §§ 914 & 914.1.

Section 77880 imposes upon the presiding judge the general obligation to charge the grand jury. Subdivision (b) identifies certain subject matters that must be included in the charge to a grand jury which will be engaging in civil investigations.

§ 77881. Training of regular grand jury

77881. To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.

Comment: Derivation: Penal Code § 914.

Penal Code § 914 provided, in addition to the language in Section 77881, that “any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.” This language, added in 1997 by chapter 443, has been superseded by the Lockyer-Isenberg Trial Court Funding Act of 1997 (ch. 850) and associated Rules of Court which make grand jury expenses the responsibility of the county, except those expenses associated with the selection of grand jurors. *See* Gov’t Code § 77200; Rules of Court 810(d) (Function 2). Accordingly, Section 77881 does include this now obsolete allocation of costs to the court or county.

§ 77881.5. Grand juror training pilot project

77881.5. (a) The Department of Justice shall administer a Civil Grand Jury Training Pilot Project, the purpose of which is to evaluate the efficacy of providing substantial training to grand jurors on a regional or statewide basis. The project shall include developing a civil grand jury curriculum, offering free training to no more than 250 grand jurors based on that curriculum between January 1, 2003, and December 31, 2003, evaluating the curriculum and training program, and preparing a report on the project for the Legislature which shall be submitted no later than July 1, 2004. At a minimum, the curriculum for the training shall include report writing, interviewing, and the scope of the grand jury’s responsibility and statutory authority.

(b) There is hereby appropriated the sum of \$300,000 to be used for the purposes specified in subdivision (a).

(c) This section shall remain in effect until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

Comment: Derivation: None.

Section 77881 authorizes a Civil Grand Jury Training Pilot Project and makes an appropriation to support the project.

§ 77882. Payment of expenditures

77882. (a) The grand jury shall not spend money or incur obligations in excess of the amount budgeted for its investigative activities pursuant to this chapter by the county board of supervisors unless the proposed expenditure is approved in advance by the presiding judge of the superior court after the board of supervisors has been advised of the request.

(b) All expenses of the grand jurors incurred under this chapter shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor upon the written order of the judge of the superior court of the county.

Comment: Derivation: Penal Code § 914.5.

Section 77882 provides the mechanism for the approval of grand jury expenditures in excess of budgeted amounts. Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and associated Rules of Court, grand jury expenses are generally borne by the county. *See* Gov't Code § 77200; Rules of Court 810(d) (Function 2) ("Civil and criminal grand jury costs (unallowable)").

§ 77883. Commencement of grand jury inquiry

77883. When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room, except when operating under a finding pursuant to Section 77911, and inquire into the matters of civil concern and public offenses cognizable by it. On the completion of the business before the grand jury or expiration of the term of prescribed service of one or more grand jurors, the court shall discharge it or the affected individual jurors.

Comment: Derivation: Penal Code § 915.

Section 77883 provides that the grand jury shall begin its inquiry after being sworn and charged. Grand jury proceedings are confidential and private, except where proceedings are held publicly as provided in Section 77911.

§ 77884. Officers and rules of proceeding

77884. (a) Each grand jury shall choose its officers, except the foreperson, and shall determine its rules of proceeding. Adoption of its rules of procedure and all public

actions of the grand jury, whether concerning civil or criminal matters unless otherwise prescribed in law, including adoption of final reports, shall be only with the concurrence of that number of grand jurors necessary to find an indictment pursuant to Section 940 of the Penal Code. Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable.

(b) If the foreperson of a grand jury is absent from any meeting or if he or she is disqualified to act, the grand jury may select a member of that body to act as foreperson pro tempore, who shall perform the duties, and have all the powers, of the regularly appointed foreperson in his or her absence or disqualification.

Comment: Derivation: Penal Code §§ 916 & 916.1.

Subdivision (a) of Section 77884 provides for the adoption of rules of procedure by the grand jury. Accordingly to Section 940 of the Penal Code, “an indictment cannot be found without concurrence of at least 14 grand jurors in a county in which the required number of members of the grand jury . . . is 23, at least eight grand jurors in a county in which the required number of members is 11, and at least 12 grand jurors in all other counties.”

Subdivision (b) of Section 77884 provides for the selection by the grand jury of a foreperson pro tempore as necessary.

§ 77885. Breach of confidentiality of grand jury proceedings as a misdemeanor

77885. (a) A grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which the grand juror or any other member of the grand jury has said, or in what manner he or she or any other grand juror has voted on a matter before them, is guilty of a misdemeanor.

(b) An interpreter for the disabled appointed to assist a member of the grand jury pursuant to Section 77912 who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which the interpreter or any member of the grand jury has said, or in what manner any grand juror has voted on a matter before them, is guilty of a misdemeanor.

Comment: Derivation: Penal Code § 924.1.

Section 77885 provides that a breach of grand jury confidentiality by either a grand juror or interpreter is punishable as a misdemeanor.

§ 77886. Secrecy of deliberations and voting; court order for disclosure of testimony

77886. A grand juror shall keep secret whatever the grand juror or any other member of the grand jury has said, or in what manner he or she or any other grand juror has voted on a matter before them. A court may require a grand juror to disclose the

testimony of a witness examined before the grand jury for the purpose of ascertaining whether the testimony is consistent with that given by the witness before the court, or to disclose the testimony given before the grand jury by a person upon a charge against such person for perjury in giving his testimony or upon trial therefor.

Comment: Derivation: Penal Code § 924.2.

Section 77886 authorizes a limited disclosure by a grand juror of testimony before a grand jury when ordered to do so by a court.

§ 77887. Privilege of juror as to statements and vote; exception in case of perjury

77887. A grand juror cannot be questioned for anything he or she may say or any vote he or she may give in the grand jury relative to a matter legally pending before the grand jury, except for a perjury of which he or she may have been guilty in making an accusation or giving testimony to his or her fellow jurors.

Comment: Derivation: Penal Code § 924.3.

Section 77887 protects grand jurors from being questioned about anything said or votes cast in the grand jury with a narrow exception for perjury by a grand juror.

§ 77888. Furnishing succeeding grand jury with information or evidence

77888. Notwithstanding the provisions of Sections 77885 and 77886, any grand jury or, if the grand jury is no longer impaneled, the presiding judge of the superior court may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request.

Comment: Derivation: Penal Code § 924.4.

Section 77888 provides for the transmission of information and evidence gathered by one grand jury to its successor, except for information that may be the basis for an indictment.

§ 77889. Release to public of non-privileged matter

77889. As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation provided that the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released. Prior to granting approval pursuant to this section, a judge may require the redaction of any part of the evidentiary material, findings, or other information to be released to the public including, but not limited to, the identity of witnesses and any

testimony or materials of a defamatory or libelous nature.

If any grand jury shall, in its final report, comment upon any person or official who has not been indicted by such grand jury, such comments shall not be deemed to be privileged.

Comment: Derivation: Penal Code § 929.

Section 77889 provides for the release of evidence and information presented to a grand jury in the course of a civil investigation after review by the presiding judge or his or her designee and appropriate redaction to remove specified information.

ARTICLE 2. SCOPE OF INVESTIGATIONS

§ 77890. Access to public prisons and public records

77890. The grand jury is entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

Comment: Derivation: Penal Code § 921.

Section 77890 ensures the grand jury will have access to all public records within the county.

§ 77891. Removal of district, county or city officers

77891. The powers and duties of the grand jury in connection with proceedings for the removal of district, county, or city officers are prescribed in Article 3 (commencing with Section 3060), Chapter 7, Division 4, Title 1, of the Government Code.

Comment: Derivation: Penal Code § 922.

Section 77891 incorporates by reference the procedures for removal of local officers provided in the Government Code (*see* Gov't Code §§ 3060 et seq.).

§ 77892. Authorization to inquire about prisoners not indicted and duty to inquire as to county prisons, and corrupt misconduct in public office

77892. (a) The grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

(b) The grand jury shall inquire into the condition and management of the public prisons within the county.

(c) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county.

Comment: Derivation: Penal Code § 919.

Section 77892 specifics the responsibility of the grand jury to inquire into the management of public prisons within the county and into willful or corrupt misconduct in office by public officials. Subdivision (a) authorizes, but does not require, the grand jury to inquire into cases of persons

imprisoned in the jail on criminal charges without indictment.

§ 77893. Investigation of realty subject to escheat

77893. The grand jury may investigate and inquire into all sales and transfers of land, and into the ownership of land, which, under the state laws, might or should escheat to the State of California. For this purpose, the grand jury may summon witnesses before it and examine them and the records. The grand jury shall direct that proper escheat proceedings be commenced when, in the opinion of the grand jury, the evidence justifies such proceedings.

Comment: Derivation: Penal Code § 920.

Section 77893 authorizes the grand jury to investigate land transactions and the ownership of land which may escheat to the State.

§ 77894. Investigation of county officers, departments or functions

77894. The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 77920.

Comment: Derivation: Penal Code § 925.

Section 77894 authorizes the grand jury to investigate and report on all county departments and functions unless such an investigation duplicates an examination under Government Code § 25250.

§ 77895. Investigation of cities or joint powers agencies

77895. The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.

The grand jury may investigate and report upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected

agency.

As used in this section, "joint powers agency" means an agency described in Section 6506 of the Government Code whose jurisdiction encompasses all or part of a county.

Comment: Derivation: Penal Code § 925a.

Section 77895 authorizes the grand jury to investigate the books and operations of any incorporated city or joint powers agency in the county.

§ 77896. Investigation of redevelopment agencies, housing authorities, or joint powers agencies

77896. A grand jury may at any time examine the books and records of a redevelopment agency, a housing authority, created pursuant to Division 24 (commencing with Section 33000) of the Health and Safety Code, or a joint powers agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such agency or authority.

Comment: Derivation: Penal Code § 933.1.

Section 77896 authorizes the grand jury to investigate the books and operations of redeveloping agencies, housing authorities, and specified joint powers agencies.

§ 77897. Investigation of special-purpose assessing or taxing district and of local agency formation commission

77897. A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission.

Comment: Derivation: Penal Code § 933.5.

Section 77897 authorizes the grand jury to investigate the books and operations of any special-purpose assessing, taxing district or local agency formation commission in the county.

§ 77898. Investigation of nonprofit corporations

77898. A grand jury may at any time examine the books and records of any nonprofit corporation established by or operated on behalf of a public entity the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such nonprofit corporation.

Comment: Derivation: Penal Code § 933.6.

Section 77898 authorizes the grand jury to investigate the books and

operations of any nonprofit corporation established or operated by any public entity.

§ 77899. Salaries of county-elected officials

77899. A grand jury may, and when requested by the board of supervisors shall, investigate and report upon the needs for increase or decrease in salaries of the county-elected officials. A copy of such report shall be transmitted to the board of supervisors.

Comment: Derivation: Penal Code § 927.

Section 77899 authorizes the grand jury to investigate and report on the salaries of county-elected officials and requires the grand jury to make such a report when requested by the board of supervisors.

§ 77900. Needs of county officers

77900. Every grand jury may investigate and report upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices. Such investigation and report shall be conducted selectively each year. The grand jury shall cause a copy of such report to be transmitted to each member of the board of supervisors of the county.

Comment: Derivation: Penal Code § 928.

Section 77900 authorizes the grand jury to investigate the needs and operations of county officers in the county.

ARTICLE 3. CONDUCT OF INVESTIGATIONS

§ 77910. Private sessions

77910. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

Comment: Derivation: Penal Code § 939.

Section 77910 requires the absolute privacy of grand jury proceedings when grand jurors are expressing their opinions or giving their votes.

§ 77911. Public sessions

77911. The grand jury acting through its foreperson and the attorney general or the district attorney may make a joint written request for public sessions of the grand jury. The request shall be filed with the superior court. If the court, or the judge thereof, finds that the subject matter of the investigation affects the general public welfare, involving the alleged corruption, misfeasance, or malfeasance in office or dereliction of duty of public officials or employees or of any person allegedly acting in conjunction or conspiracy with such officials or employees in such alleged acts, the court or judge may

make an order directing the grand jury to conduct its investigation in a session or sessions open to the public. The order shall state the finding of the court. The grand jury shall comply with the order.

The conduct of such investigation and the examination of witnesses shall be by the members of the grand jury and the district attorney.

The deliberation of the grand jury and its voting upon such investigation shall be in private session. The grand jury may find indictments based wholly or partially upon the evidence introduced at such public session.

Comment: Derivation: Penal Code § 939.1.

Section 77911 provides a mechanism for the grand jury to conduct public proceedings when such proceedings affects the general public welfare.

§ 77912. Interpreter for grand juror

77912. Any member of the grand jury who has a hearing, sight, or speech disability may request an interpreter when his or her services are necessary to assist the juror to carry out his or her duties. The request shall be filed with the superior court. If the court, or the judge thereof, finds that an interpreter is necessary, the court shall make an order to that effect and may require by subpoena the attendance of any person before the grand jury as interpreter. If the services of an interpreter are necessary, the court shall instruct the grand jury and the interpreter that the interpreter is not to participate in the jury's deliberations in any manner except to facilitate communication between the disabled juror and the other jurors. The court shall place the interpreter under oath not to disclose any grand jury matters, including the testimony of any witness, statements of any grand juror, or the vote of any grand juror, except in the due course of judicial proceedings.

Comment: Derivation: Penal Code § 939.11.

Section 77912 authorizes the employment of an interpreter to assist a grand juror who has a hearing, sight or speech disability.

§ 77913. Subpoena of witnesses

77913. A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his or her investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses whose testimony, in his or her opinion is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

Comment: Derivation: Penal Code § 939.2.

Section 77913 sets forth the procedure for issuing subpoenas requiring the attendance of witnesses before the grand jury.

§ 77914. Meeting with subjects of grand jury investigation

77914. (a) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report

that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(b) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

Comment: Derivation: Penal Code § 933.05(d) & (e).

Subdivision (a) of Section 77914 authorizes the grand jury to meet with the subject of a grand jury report to verify the accuracy of findings prior to their release. Subdivision (b) of Section 77914 requires that the grand jury meet with the subject of an investigation during the investigation unless the court determines that such a meeting would be detrimental.

§ 77915. Authority to administer oaths

77915. The foreperson may administer an oath to any witness appearing before the grand jury.

Comment: Derivation: Penal Code § 939.4.

Section 77915 authorizes the foreperson to administer oaths.

ARTICLE 4. LEGAL AND OTHER ASSISTANTS FOR GRAND JURIES

§ 77920. Experts and assistants in performing audits

77920. (a) If, in the judgment of the grand jury, the services of one or more experts are necessary for the purposes of Article 2, the grand jury may employ one or more experts, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court. Expenditures for the services of experts and assistants for the purposes of Section 77897 shall not exceed the sum of thirty thousand dollars (\$30,000) annually, unless such expenditures shall also be approved by the board of supervisors.

(b) When making an examination of the books, records, accounts, and documents maintained and processed by the county assessor, the grand jury, with the consent of the board of supervisors, may employ expert auditors or appraisers to assist in the examination. Auditors and appraisers, while performing pursuant to the directive of the grand jury, shall have access to all records and documents that may be inspected by the grand jury subject to the same limitations on public disclosure as apply to the grand jury.

(c) Any contract entered into by a grand jury pursuant to this section may include services to be performed after the discharge of the jury, but in no event may a jury contract for services to be performed later than six months after the end of the fiscal year during which the jury was impaneled.

(d) Any contract entered into by a grand jury pursuant to this section shall stipulate that the product of that contract shall be delivered on or before a time certain to the then-

current grand jury of that county for such use as that jury finds appropriate to its adopted objectives.

Comment: Derivation: Penal Code § 926.

Section 77920 authorizes the grand jury, with the approval of the court, to employ such experts and assistants as are necessary to fulfill the grand jury's investigatory responsibilities under Article 2.

§ 77921. Legal advice from judge, district attorney, county counsel, or Attorney General

77921. (a) The grand jury may, at all times, request the advice of the court, or a judge thereof, the district attorney, the county counsel, or the Attorney General. Unless advice is requested, a judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

(b) The Attorney General may grant or deny a request for advice from the grand jury. If the Attorney General grants a request for advice from the grand jury, the Attorney General shall fulfill that request within existing financial and staffing resources.

Comment: Derivation: Penal Code § 934.

Section 77921 authorizes the grand jury to request legal assistance from the court, a judge, the district attorney, county counsel or the Attorney General's office. Subdivision (b) gives the Attorney General the discretion to deny a request for assistance from a grand jury.

§ 77922. Appearance of district attorney

77922. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury whenever he or she thinks it necessary. When a charge against or involving the district attorney, or assistant district attorney, or deputy district attorney, or anyone employed by or connected with the office of the district attorney, is being investigated by the grand jury, such district attorney, or assistant district attorney, or deputy district attorney, or all or anyone or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity but only as a witness, and he or she shall only be present while a witness and after his or her appearance as such witness shall leave the place where the grand jury is holding its session.

Comment: Derivation: Penal Code § 935.

Section 77922 authorizes the district attorney to appear at all times before the grand jury to give information or advice or to interrogate witnesses.

§ 77923. Special counsel and investigators employed by the Attorney General

77923. When requested so to do by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to

investigate and present the evidence in such investigation to such grand jury.

The services of such special counsel and special investigators shall be a county charge of such county.

Comment: Derivation: Penal Code § 936.

Section 77923 authorizes the grand jury to request the appointment by the Attorney General of special counsel and investigators to assist the grand jury.

§ 77924. Special counsel and investigators employed by the presiding judge

77924. (a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds.

Comment: Derivation: Penal Code § 936.5.

Section 77924 authorizes the grand jury to request the presiding judge to appoint special counsel or investigators to assist the grand jury. The presiding judge may not appoint special counsel or investigators unless the judge finds a conflict would prevent the district attorney, county counsel and Attorney General from providing such assistance and unless the auditor-comptroller of the county certifies the availability of sufficient funds to compensate the counsel or investigators.

§ 77925. Special counsel employed in Sacramento county

77925. (a) In a county of the eighth class, as defined by Sections 28020 and 28029 of the Government Code, upon a request by the grand jury, the presiding judge of the superior court may retain, in the name of the county, a special counsel to the grand jury. The request shall be presented to the presiding judge in camera, by an affidavit, executed by the foreperson of the grand jury, which specifies the reason for the request and the nature of the services sought, and which certifies that the appointment of the special

counsel is reasonably necessary to aid the work of the grand jury. The affidavit shall be confidential and its contents may not be made public except by order of the presiding judge upon a showing of good cause. The special counsel shall be selected by the presiding judge following submission of the name of the nominee to the board of supervisors for comment.

The special counsel shall be retained under a contract executed by the presiding judge in the name of the county. The contract shall contain the following terms:

(1) The types of legal services to be rendered to the grand jury; provided, (i) that the special counsel's duties shall not include any legal advisory, investigative, or prosecutorial service which by statute is vested within the powers of the district attorney, and (ii) that the special counsel may not perform any investigative or prosecutorial service whatsoever except upon advance written approval by the presiding judge which specifies the number of hours of these services, the hourly rate therefor, and the subject matter of the inquiry.

(2) The hourly rate of compensation of the special counsel for legal advisory services delivered, together with a maximum contract amount payable for all services rendered under the contract during the term thereof, and all service authorizations issued pursuant thereto.

(3) That the contract may be canceled in advance of the expiration of its term by the presiding judge pursuant to service upon the special counsel of 10 days' advance written notice.

(b) The maximum contract amount shall be determined by the board of supervisors and included in the grand jury's annual operational budget. The maximum amount shall be subject to increase by the presiding judge through contract amendment during the term thereof, subject to and in compliance with the procedure prescribed by Section 77882.

(c) The contract shall constitute a public record and shall be subject to public inspection and copying pursuant to the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). However, at the sole discretion of the board of supervisors, any or all of the following steps may be taken:

(1) The nomination by the presiding judge, and any or all actions by the board of supervisors in commenting upon the nominee and the comments, may be made confidential.

(2) The deliberations and actions may be undertaken in meetings from which the public is excluded, and the communication containing comments may constitute a confidential record which is not subject to public inspection or copying except at the sole discretion of the board of supervisors. Moreover, any written authorization by the presiding judge pursuant to paragraph (1) of subdivision (a) shall constitute a confidential record which is not subject to public inspection or copying except in connection with a dispute concerning compensation for services rendered.

Comment: Derivation: Penal Code § 936.7.

Section 77925 provides a special process for the appointment of

special counsel or investigators applicable only to Sacramento county.

§ 77926. Interpreter

77926. The grand jury or district attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, such interpreter may be present at the examination of witnesses before the grand jury. The compensation for services of such interpreter constitutes a charge against the county, and shall be fixed by the grand jury.

Comment: Derivation: Penal Code § 937.

Section 77926 authorizes the grand jury or district attorney to require the attendance of an interpreter when necessary.

ARTICLE 5. REPORTS AND RESPONSES

§ 77930. Actions for recovery of money due county

77930. After investigating the books and accounts of the various officials of the county, as provided in the foregoing sections of this article, the grand jury may order the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county. The order of the grand jury, certified by the foreperson of the grand jury and filed with the county clerk of the county, shall be full authority for the district attorney to institute and maintain any such suit.

Comment: Derivation: Penal Code § 932.

Section 77930 authorizes the grand jury, based on its investigation, to order the district attorney to file a lawsuit to recover any money that the grand jury believes may be due the county.

§ 77931. Report or recommendation only after own investigation

77931. A grand jury shall make no report, declaration, or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury. A grand jury shall not adopt as its own the recommendation of another grand jury unless the grand jury adopting such recommendation does so after its own investigation of the matter as to which the recommendation is made, as required by this section.

Comment: Derivation: Penal Code § 939.9.

Section 77931 restricts the grand jury to making reports, declarations and recommendations that are based only on its own investigation. A grand jury may not adopt another grand jury's recommendations without conducting its own investigation.

§ 77932. Final report

77932. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may

be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. The county clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

(d) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to subdivision (b) of Section 77880 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(e) As used in this section "agency" includes a department.

Comment: Derivation: Penal Code § 933.

Subdivision (a) of Section 77932 requires a grand jury to submit final reports to the presiding judge. Subdivision (c) requires the grand jury to give an agency subject to a report a copy of the pertinent portions of the report two days before its public release. Subdivision (d) requires various agencies and local officials to file responses to a grand jury report within certain time periods. The content of the responses is governed by Section 77934.

§ 77934. Responses to findings

77934. (a) For purposes of subdivision (d) of Section 77932, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (d) of Section 77932, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comment: Derivation: Penal Code § 933.05.

Section 77934 sets forth specific requirements for the responses to grand jury reports which must be filed pursuant to Section 77933.

§ 77934. Vacancies on grand jury

77934. (a) Notwithstanding Sections 77884 and 77970, in a county having a population of 20,000 or less, a final report may be adopted and submitted pursuant to Section 77932 with the concurrence of a least 10 grand jurors if all of the following conditions are met:

(1) The grand jury consisting of 19 persons has been impaneled pursuant to law, and the membership is reduced from 19 to fewer than 12.

(2) The vacancies have not been filled pursuant to Section 77861 within 30 days from the time that the clerk of the superior court is given written notice that the vacancy

has occurred.

(3) A final report has not been submitted by the grand jury pursuant to Section 77932.

(b) Notwithstanding Section 77932, no responsible officers, agencies, or departments shall be required to comment on a final report submitted pursuant to this section.

Comment: Derivation: Penal Code § 933.06.

Section 77934 provides a special mechanism for approval of final reports notwithstanding vacancies in counties with a population of 20,000 or less.

CHAPTER 5. ADDITIONAL POWERS AND DUTIES OF CRIMINAL GRAND JURY

ARTICLE 1. GENERAL PROVISIONS

§ 77940. Additional powers and duties

77940. A grand jury with the power to issue indictments has all of the powers and duties set forth in Chapter 4 and, in addition, has the powers and duties set forth in this chapter. A grand jury established with the power to issue indictments may inquire into any matters which are subject to grand jury inquiry and shall have the sole and exclusive jurisdiction to return indictments, except for any matters which the regular grand jury, if any, is inquiring into at the time of its impanelment.

Comment: Derivation: Penal Code § 904.6.

Section 77940 provides that a grand jury impaneled with the power to issue indictments (*see* Section 77853) has both the powers of a regular grand jury (*see* Chapter 4) and the powers of a criminal grand jury as set forth in Chapter 5. The final clauses in Section 77940 ensure that there is no overlap between the work of a regular grand jury and a criminal grand jury if both types of grand juries have been impaneled.

§ 77941. Wilful disclosure of making of information or indictment; misdemeanor

77941. A grand juror who willfully discloses the fact of an information or indictment having been made for a felony, before the defendant has been arrested, is guilty of a misdemeanor.

Comment: Derivation: Penal Code § 924.

Section 77941 makes it a misdemeanor for a grand juror to breach the confidentiality of the fact of an information or indictment for a felony when that breach occurs before an arrest has been made (i.e., at a time when the breach might frustrate bringing the person charged into custody).

§ 77942. Court order for disclosure of testimony of witness

77942. If no indictment is returned, the court that impaneled the grand jury shall, upon application of either party, order disclosure of all or part of the testimony of a witness before the grand jury to a defendant and the prosecutor in connection with any pending or subsequent criminal proceeding before any court if the court finds following an in camera hearing, which shall include the court's review of the grand jury's testimony, that the testimony is relevant, and appears to be admissible.

Comment: Derivation: Penal Code § 924.6.

Section 77942 provides a mechanism for a limited disclosure of grand jury testimony in circumstances where no indictment was returned and the testimony is relevant and probably admissible in a criminal proceeding.

§ 77943. Reports or declarations

77943. (a) A grand jury which investigates a charge against a person, and as a result thereof cannot find an indictment against such person, shall, at the request of such person and upon the approval of the court which impaneled the grand jury, report or declare that a charge against such person was investigated and that the grand jury could not as a result of the evidence presented find an indictment. The report or declaration shall be issued upon completion of the investigation of the suspected criminal conduct, or series of related suspected criminal conduct, and in no event beyond the end of the grand jury's term.

(b) A grand jury shall, at the request of the person called and upon the approval of the court which impaneled the grand jury, report or declare that any person called before the grand jury for a purpose, other than to investigate a charge against such person, was called only as a witness to an investigation which did not involve a charge against such person. The report or declaration shall be issued upon completion of the investigation of the suspected criminal conduct, or series of related suspected criminal conduct, and in no event beyond the end of the grand jury's term.

Comment: Derivation: Penal Code § 939.91.

Section 77943 provides a mechanism for persons called to testify before a grand jury to avoid the stigma that might be attached to the appearance. Subdivision (a) applies to targets of an investigation, and subdivision (b) applies to non-target witnesses.

ARTICLE 2. SCOPE OF INVESTIGATION

§ 77945. Inquiry into public offenses

77945. The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

Comment: Derivation: Penal Code § 917.

Section 77945 provides a broad scope for grand jury inquires into criminal acts.

§ 77946. Declaration of knowledge of offenses

77946. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he or she may declare it to his or her fellow jurors, who may thereupon investigate it.

Comment: Derivation: Penal Code § 918.

Section 77946 permits an individual grand juror, based on his or her own knowledge and reasonable belief, to report public offenses to the grand jury.

§ 77947. Presentation by attorney general

77947. Whenever the Attorney General considers the public interest requires, he or she may, with or without the concurrence of the district attorney, direct the grand jury to convene for the investigation and consideration of such matters of a criminal nature as he or she desires to submit to it. The Attorney General may take full charge of the presentation of such matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.

Comment: Derivation: Penal Code § 923.

Section 77947 authorizes the Attorney General to convene the grand jury for the purposes of a criminal investigation and to take full charge of such a grand jury to the same extent as a district attorney.

ARTICLE 3. CONDUCT OF INVESTIGATION

§ 77950. Statement of matter to be considered and person to be charged

77950. Before considering a charge against any person, the foreperson of the grand jury shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. The foreperson shall direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him or her from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this section by the foreperson or any member of the grand jury is punishable by the court as a contempt.

Comment: Derivation: Penal Code § 939.5.

Section 77950 sets forth the procedure for commencing a grand jury's investigation into a criminal charge and requires grand jurors who would be prevented from acting impartially and without prejudice to retire.

§ 77951. Private sessions

77951. No persons other than those specified in Article 4 (commencing with Section 77920), and in Sections 77911, 77912, and 77954 and the officer having custody of a prisoner witness while the prisoner is testifying, are permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section

77950 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

Comment: Derivation: Penal Code § 939.

Section 77951 ensures that only those persons who are statutorily authorized are present during criminal sessions of the grand jury.

§ 77952. Subpoena

77952. (a) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his or her investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his or her opinion is material in an investigation before the grand jury, and for other witnesses as the grand jury, upon an investigation pending before them, may direct.

(b) (1) Except as provided in paragraph (2), the prosecution shall advise any witness who is the subject of a grand jury investigation, through either a subpoena issued pursuant to subdivision (a) to the witness or a written notice to the witness or to his or her counsel, if retained, as to all of the following:

(A) The witness is the subject of a grand jury investigation.

(B) The witness may have an attorney present during the grand jury examination.

(C) The witness has the right to disclose, in writing, exculpatory evidence, including the names and addresses of witnesses who possess exculpatory information, to the prosecutor.

(2) Paragraph (1) shall not apply if any of the following applies:

(A) The prosecutor is not able to notify the witness with reasonable diligence.

(B) A corporation is the subject of the investigation and the witness is an employee or officer of the corporation and the witness is not the subject of the grand jury investigation.

(C) The prosecutor determines during the grand jury hearing that a previous witness has become the subject of the grand jury investigation.

(D) The prosecutor obtains a waiver from the supervising criminal judge of the superior court upon proof that there are reasonable grounds to believe the notice would create an undue risk or danger to other persons or a reasonable possibility of destruction of evidence, or there is a strong suspicion of flight of the witness.

(E) The court issues a waiver to the prosecution upon a showing of good cause that the interests of justice would not be furthered by notifying the subject of the grand jury proceedings pursuant to this section.

Comment: Derivation: Penal Code § 939.2; AB 527 (Baugh; 1999-2000).

Subdivision (a) of Section 77952 authorizes the district attorney or a judge, on the request of the grand jury, to issue subpoenas to compel the attendance of witnesses. Subject to narrow exceptions in subdivision (c),

subdivision (b) requires the district attorney to notify a witness who is also a target of the grand jury investigation that the witness is the subject of an investigation, that the witness has a right to have counsel present, and that the witness may disclose exculpatory evidence to the prosecutor.

§ 77953. Right to counsel

77953. (a) Any witness before a grand jury who is or becomes the subject of a grand jury investigation that may result in an indictment, or in an accusation pursuant to Section 3060 of the Government Code, may have counsel present on his or her behalf while he or she is testifying. Any counsel present before the grand jury pursuant to this subdivision shall comply with all of the following:

(1) Counsel shall not object to any questions asked of the witness or otherwise speak to the grand jury, but may advise the witness during the course of the examination.

(2) Counsel shall not disclose anything heard in the grand jury room.

(3) Counsel, or any law firm representing a witness pursuant to this subdivision, shall not represent more than one witness in the same proceeding.

(b) Subdivision (a) shall not apply if a corporation is the subject of the investigation and the witness is an employee or officer of the corporation and the witness is not the subject of the grand jury investigation.

(c) Any witness who is the subject of a grand jury investigation has the right to disclose, in writing, exculpatory evidence, including the names and addresses of witnesses who possess exculpatory information, to the prosecutor.

(d) The prosecuting attorney may make a motion to the presiding judge for sanctions against counsel who is representing a witness pursuant to subdivision (a) for any violation of this section and refer the violation to the State Bar of California.

(e) A witness who is entitled to have counsel present pursuant to subdivision (a) and who appears without counsel shall be informed by the prosecutor that it is his or her right to have counsel present and shall be asked if he or she desires the assistance of counsel. If he or she desires and is unable to employ counsel the court shall assign counsel in the same manner as trial counsel is assigned pursuant to Sections 987 through 987.9 of the Penal Code.

(f) Nothing in this section shall be construed to grant a witness a constitutional right to counsel under the United States or California Constitutions nor grant any right to discovery for the subpoenaed witness.

Comment: Derivation: AB 527 (Baugh; 1999-2000).

Section 77953 guarantees certain rights, including the right to have counsel present in the grand jury room, to a witness who is also a target of a grand jury investigation. Counsel is limited by subdivision (a) to advising his or her client and may not speak to the grand jury or make objections.

Subdivision (e) requires the prosecutor to notify an unrepresented witness of his or her right to have the assistance of counsel and that, if the witness is unable to afford counsel, counsel will be appointed by the court.

§ 77954. Minor prosecution witness appearing before grand jury

77954. (a) Any prosecution witness before the grand jury in a proceeding involving a violation of Penal Code Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision 1 of Section 314, Section 647.6, or former Section 647a, who is a minor, may, at the discretion of the prosecution, select a person of his or her own choice to attend the testimony of the prosecution witness for the purpose of providing support. The person chosen shall not be a witness in the same proceeding, or a person described in Section 1070 of the Evidence Code.

(b) The grand jury foreperson shall inform any person permitted to attend the grand jury proceedings pursuant to this section that grand jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. The foreperson also shall admonish that person not to prompt, sway, or influence the witness in any way. Nothing in this section shall preclude the presiding judge from exercising his or her discretion to remove a person from the grand jury proceeding whom the judge believes is prompting, swaying, or influencing the witness.

Comment: Derivation: Penal Code § 939.21.

Section 77954 permits a minor to select a person to attend the session to provide support, if approved by the prosecution.

§ 77955. Self-incrimination

77955. In any investigation or proceeding before a grand jury for any felony offense when a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated thereby, proceedings may be had under Section 1324 of the Penal Code.

Comment: Derivation: Penal Code § 939.3.

Section 77955 provides that when a witness refuses to testify before a grand jury on grounds of self-incrimination in a felony investigation, proceedings may be had pursuant to Penal Code § 1324 to compel the testimony (which may involve granting use or transactional immunity to the witness).

§ 77956. Evidence

77956. (a) Subject to subdivision (b), in the investigation of a charge, the grand jury shall receive no other evidence than what is:

- (1) Given by witnesses produced and sworn before the grand jury;
- (2) Furnished by writings, material objects, or other things presented to the senses;

or

(3) Contained in a deposition that is admissible under subdivision 3 of Section 686 of the Penal Code.

(b) Except as provided in subdivision (c), the grand jury shall not receive any evidence except that which would be admissible over objection at the trial of a criminal

action, but the fact that evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.

(c) Notwithstanding Section 1200 of the Evidence Code, as to the evidence relating to the foundation for admissibility into evidence of documents, exhibits, records, and other items of physical evidence, the evidence to support the indictment may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statement of a declarant made out of court and offered for the truth of the matter asserted. Any law enforcement officer testifying as to a hearsay statement pursuant to this subdivision shall have either five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

Comment: Derivation: Penal Code § 939.6.

Section 77956 sets forth the rules of evidence applicable to criminal grand jury proceedings.

§ 77957. Evidence for defendant

77957. The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Comment: Derivation: Penal Code § 939.7.

Section 77957 imposes upon the grand jury the obligation to order other evidence to be produced when the grand jury has reason to believe that other evidence within its reach will explain away the charge.

§ 77958. Exculpatory evidence

77958. (a) If the prosecutor is aware of exculpatory evidence, the prosecutor shall inform the grand jury of its nature and existence. Once the prosecutor has informed the grand jury of exculpatory evidence pursuant to this section, the prosecutor shall inform the grand jury of its duties under Section 77957. If a failure to comply with the provisions of this section results in substantial prejudice, it shall be grounds for dismissal of the portion of the indictment related to that evidence.

(b) It is the intent of the Legislature by enacting this section to codify the holding in *Johnson v. Superior Court*, 15 Cal. 3d 248, and to affirm the duties of the grand jury pursuant to Section 77957.

Comment: Derivation: Penal Code § 939.71.

Section 77958 sets forth the prosecutor's duty to present exculpatory evidence to a grand jury and provides a sanction in the form of a dismissal for a failure to comply with that duty.

§ 77959. Sufficiency of evidence to warrant indictment

77959. The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury.

Comment: Derivation: Penal Code § 939.8.

Section 77959 sets forth the standard used by the grand jury in deciding whether to find an indictment.

§ 77960. Stenographic reporter

77960. (a) Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He or she shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented.

(b) At the request of the grand jury, the reporter shall also prepare transcripts of any testimony reported during any session of the immediately preceding grand jury.

Comment: Derivation: Penal Code § 938.

Section 77960 requires the appointment of a reporter to take down all testimony before the grand jury in criminal causes and to transcribe the testimony when an indictment is returned or accusation presented.

§ 77961. Transcript of testimony

77961. (a) If an indictment has been found or accusation presented against a defendant, the stenographic reporter shall certify and deliver to the county clerk an original transcription of his or her shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete such certification and delivery within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The county clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and deliver a copy of such transcript to each such defendant or his or her attorney. If the copy of the testimony is not served as provided in this section the court shall on motion of the defendant continue the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or his or her attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations.

(b) The transcript shall not be open to the public until 10 days after its delivery to the defendant or his or her attorney. Thereafter the transcript shall be open to the public

unless the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making all or any part of the transcript public may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the defendant's trial has been completed.

Comment: Derivation: Penal Code § 938.1.

Section 77961 provides for the preparation of a transcript of testimony before a grand jury when an indictment has been returned or accusation presented.

§ 77962. Payment of reporter

77962. (a) For preparing any transcript in any case pursuant to subdivision (a) of Section 77961, the stenographic reporter shall draw no salary or fees from the county for preparing such transcript in any case until all such transcripts of testimony in such case so taken by him or her are written up and delivered. Before making the order for payment to the reporter, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he or she has written up and delivered all testimony taken by him or her, in accordance with subdivision (a) of Section 77958 and Section 77959.

(b) Before making the order for payment to a reporter who has prepared transcripts pursuant to subdivision (b) of Section 77958, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he or she has written up and delivered all testimony requested of him or her in accordance with that subdivision.

Comment: Derivation: Penal Code § 938.2.

Section 77962 authorizes payment to a reporter for preparing certain transcripts. Payments under this section are conditioned upon a showing by the reporter that certain other work has been completed.

§ 77963. Services of reporter as charge against county

77963. The services of the stenographic reporter shall constitute a charge against the county, and the stenographic reporter shall be compensated for reporting and transcribing at the same rates as prescribed in Sections 69947 to 69954, inclusive, of the Government Code, to be paid out of the county treasury on a warrant of the county auditor when ordered by the judge of the superior court.

Comment: Derivation: Penal Code § 938.3.

Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and associated Rules of Court, grand jury expenses are generally borne by the county. *See* Gov't Code § 77200; Rules of Court 810(d) (Function 2) ("Civil and criminal grand jury costs (unallowable)").

The statutes dealing with rates charged by court reporters are currently under review by the California Law Revision Commission. Accordingly, we make no effort here to ascertain whether the reference to rates prescribed in Sections 69947 to 69954 in this section is still valid.

ARTICLE 4. FINDING AND PRESENTMENT

§ 77970. Finding and endorsement

77970. An indictment cannot be found without concurrence of at least 14 grand jurors in a county in which the required number of members of the grand jury is 23, at least eight grand jurors in a county in which the required number of members is 11, and at least 12 grand jurors in all other counties. When so found it shall be endorsed, "A true bill," and the endorsement shall be signed by the foreperson of the grand jury.

Comment: Derivation: Penal Code § 940.

Section 77970 prescribes the number of votes required to find an indictment and requires the foreperson to endorse the indictment by signature.

§ 77971. Indorsing names of witnesses

77971. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Comment: Derivation: Penal Code § 943.

Section 77971 requires that the names of witnesses who appeared before the grand jury must be included at the end of an indictment.

§ 77972. Presentment

77972. An indictment, when found by the grand jury, must be presented by their foreperson, in their presence, to the court, and must be filed with the clerk. No recommendation as to the dollar amount of bail to be fixed shall be made to any court by any grand jury.

Comment: Derivation: Penal Code § 944.

Section 77972 sets forth the procedure for presenting an indictment to the court and prohibits a grand jury from making a bail recommendation.

§ 77973. Bench warrant

77973. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in Sections 979 to 984, inclusive, of the Penal Code, against a defendant who fails to appear for arraignment.

Comment: Derivation: Penal Code § 945.

Section 77973 provides for a bench warrant to arrest an indicted defendant who is not in custody.