

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1763**

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**Introduced by Assembly Member Davis**

February 17, 2012

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An act to amend Section 923 of the Penal Code, relating to grand jury proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, as amended, Davis. Grand jury proceedings: Attorney General: powers and duties.

Existing law authorizes the Attorney General to convene the grand jury to investigate and consider certain criminal matters. The Attorney General is authorized to take full charge of the presentation of the 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. *Existing law authorizes the Attorney General to empanel a special grand jury to investigate, consider, or issue indictments for specified activities relating to Medi-Cal fraud.*

~~This bill also would provide that when the grand jury is convened by the Attorney General, the Attorney General is required to take full charge of the presentation of the 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~~ *authorize the Attorney General to convene a special grand jury, as prescribed, for cases involving fraud or theft of public moneys, impairment of the collection of public money, fraud or theft that occurs in more than one county and where all potential charges could not otherwise be brought in a single county, and charges that could reasonably result in a sentencing*

*enhancement for aggravated white collar crime. The bill would establish the Attorney General’s Special Grand Jury Fund in the State Treasury and would require each defendant convicted of charges brought by a special grand jury to pay a fine of \$500 into that fund to be used upon appropriation of the Legislature.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 923 of the Penal Code is amended to  
 2 read:  
 3 923. (a) Whenever the Attorney General considers that the  
 4 public interest requires, he or she may, with or without the  
 5 concurrence of the district attorney, direct the grand jury to convene  
 6 for the investigation and consideration of those matters of a  
 7 criminal nature that he or she desires to submit to it. He or she  
 8 shall may take full charge of the presentation of the matters to the  
 9 grand jury, issue subpoenas, prepare indictments, and do all other  
 10 things incident thereto to the same extent as the district attorney  
 11 may do.  
 12 (b) Whenever the Attorney General considers that the public  
 13 interest requires, he or she may, with or without the concurrence  
 14 of the district attorney, petition the court to impanel a special grand  
 15 jury to investigate, consider, or issue indictments for any of the  
 16 activities ~~subject to fine, imprisonment, or asset forfeiture under~~  
 17 ~~Section 14107 of the Welfare and Institutions Code. He or she set~~  
 18 *forth in subdivision (c). The petition may be presented under seal*  
 19 *and shall set forth, in general terms, the grounds justifying the*  
 20 *request as set forth in subdivision (c). The court shall grant the*  
 21 *petition if the petition generally demonstrates the Attorney*  
 22 *General’s belief that a crime addressed under subdivision (c) has*  
 23 *been committed. The Attorney General may take full charge of*  
 24 *the presentation of the matters to the grand jury, issue subpoenas,*  
 25 *prepare indictments, and do all other things incident thereto to the*  
 26 *same extent as the district attorney may do. If the evidence*  
 27 *presented to the grand jury shows the commission of an offense*  
 28 *or offenses for which jurisdiction would be in a county other than*  
 29 *the county where the grand jury is impaneled, the Attorney General,*  
 30 *with or without the concurrence of the district attorney in the*

1 county with jurisdiction over the offense or offenses, may petition  
2 the court to impanel a special grand jury in that county.  
3 Notwithstanding any other provision of law, upon request of the  
4 Attorney General, a grand jury convened by the Attorney General  
5 pursuant to this subdivision may submit confidential information  
6 obtained by that grand jury, including, but not limited to documents  
7 and testimony, to a second grand jury that has been impaneled at  
8 the request of the Attorney General pursuant to this subdivision  
9 in any other county where venue for an offense or offenses shown  
10 by evidence presented to the first grand jury is proper. All  
11 confidentiality provisions governing information, testimony, and  
12 evidence presented to a grand jury shall be applicable except as  
13 expressly permitted by this subdivision. The Attorney General  
14 shall inform the grand jury that transmits confidential information  
15 and the grand jury that receives confidential information of any  
16 exculpatory evidence, as required by Section 939.71. The grand  
17 jury that transmits information to another grand jury shall include  
18 the exculpatory evidence disclosed by the Attorney General in the  
19 transmission of the confidential information. The Attorney General  
20 shall inform both the grand jury transmitting the confidential  
21 information and the grand jury receiving that information of their  
22 duties under Section 939.7. A special grand jury convened pursuant  
23 to this subdivision shall be in addition to the other grand juries  
24 authorized by this chapter or Chapter 2 (commencing with Section  
25 893).

26 (c) *The following activities are subject to indictment by a special*  
27 *grand jury impaneled pursuant to subdivision (b):*

28 (1) *Activities subject to fine, imprisonment, or asset forfeiture*  
29 *under Section 14107 of the Welfare and Institutions Code.*

30 (2) *Activities that involve, in whole or in part, fraud or theft*  
31 *that result in the direct or indirect loss of one hundred thousand*  
32 *dollars (\$100,000) or more in public money. For purposes of this*  
33 *subdivision, "public money" means fees or taxes of any kind*  
34 *collected by a state governmental agency or political subdivision*  
35 *of the state, or collected by a county or city governmental agency*  
36 *in the state.*

37 (3) *Fraud or theft that occurs in more than one county and*  
38 *where all the potential charges against a defendant, or defendants*  
39 *acting in concert, cannot otherwise be brought in a single county.*

1     (4) *An activity that could result, upon conviction of potential*  
2 *charges reasonably contemplated by the Attorney General to be*  
3 *included in the proposed indictment, in a sentencing enhancement*  
4 *under Section 186.11.*

5     (d) *A special grand jury requested by the Attorney General*  
6 *pursuant to subdivision (b) may be impaneled in the Counties of*  
7 *Fresno, Los Angeles, Sacramento, San Diego, or San Francisco,*  
8 *at the Attorney General's discretion. A special grand jury*  
9 *impaneled under this section shall serve for a term of 18 months*  
10 *unless dismissed earlier by the Attorney General. Upon notice by*  
11 *the Attorney General to the grand jury coordinator or presiding*  
12 *judge of the county where the special grand jury is impaneled, the*  
13 *special grand jury's term can be extended by up to six months.*

14     (e) *For special grand juries impaneled pursuant to subdivision*  
15 *(b), and notwithstanding Section 1200 or 1401 of the Evidence*  
16 *Code, the Attorney General may establish a foundation for*  
17 *documentary evidence in order to introduce that evidence to the*  
18 *special grand jury for consideration, if the documents were*  
19 *acquired through a grand jury subpoena or a court-approved*  
20 *search warrant, and a law enforcement officer or investigator*  
21 *testifies that the documents were obtained in that manner.*

22     (1) *For documents that were obtained by a grand jury subpoena*  
23 *and which the Attorney General seeks to introduce under this*  
24 *subdivision, a law enforcement officer or investigator shall inform*  
25 *the grand jury if the custodian of records for the documents*  
26 *supplied an affidavit attesting to the manner in which the records*  
27 *were maintained. The absence of an affidavit, however, shall not*  
28 *preclude their introduction for the grand jury to consider.*

29     (2) *For documents that were obtained by a court-approved*  
30 *search warrant and which the Attorney General seeks to introduce*  
31 *under this subdivision, a law enforcement officer or investigator*  
32 *shall describe the manner in which the documents were kept at*  
33 *the site of the search warrant. The testifying law enforcement*  
34 *officer or investigator may obtain this information from another*  
35 *officer or investigator that was present at the search warrant site*  
36 *when the documents were obtained. The manner in which the*  
37 *documents were kept at the site where they were obtained shall*  
38 *have no bearing on the Attorney General's ability to introduce the*  
39 *documents to the grand jury.*

1 (3) A law enforcement officer or investigator testifying in order  
2 to establish the foundation for documentary evidence under this  
3 subdivision shall either have five years of law enforcement  
4 experience or have completed a training course certified by the  
5 Commission on Peace Officer Standards and Training that includes  
6 training in investigation and reporting of cases at preliminary  
7 hearings or for grand juries.

8 (f) For special grand juries impaneled pursuant to subdivision  
9 (b), where the Attorney General, in his or her discretion,  
10 reasonably believes there are more than 10 victims of a crime  
11 attributable to the same defendant, or defendants acting in concert,  
12 and indictable by a special grand jury pursuant to subdivision (b),  
13 the victims need not testify to the special grand jury in order for  
14 the prosecutor to establish a count or charge in the indictment if  
15 a peace officer or investigator, certified in the same manner as in  
16 paragraph (3) of subdivision (e), testifies with respect to the dollar  
17 loss amount suffered by each victim and any other related  
18 information with respect to each victim. Nothing in this subdivision  
19 shall prevent the prosecutor from calling some or all of the victims  
20 to testify for the grand jury.

21 (g) For special grand juries impaneled pursuant to subdivision  
22 (b), the Attorney General may issue subpoenas for documents and  
23 witnesses located anywhere in the state in order to obtain evidence  
24 to present to the special grand jury. The special grand jury may  
25 hear all evidence in the form of testimony or physical evidence  
26 presented to them, irrespective of the location of the witness or  
27 physical evidence prior to subpoena. The special grand jury  
28 impaneled pursuant to subdivision (b) may indict a person or  
29 persons with charges for crimes that occurred in counties other  
30 than where the special grand jury is impaneled. The indictment  
31 shall then be submitted to the appropriate court in any of the  
32 counties where any of the charges could otherwise have been  
33 properly brought.

34 (h) Notwithstanding Section 944, an indictment found by a  
35 special grand jury and endorsed as a true bill by the special grand  
36 jury foreperson, may be presented to the appropriate court, as set  
37 forth in subdivision (g), solely by the prosecutor within five court  
38 days of the endorsement of the indictment. For indictments  
39 presented to the court in this manner, the prosecutor shall also  
40 file with the court or court clerk, at the time of presenting the

1 indictment, an affidavit signed by the special grand jury foreperson  
2 attesting that all the jurors who voted on the indictment heard all  
3 of the evidence presented by the prosecutor, and that a proper  
4 number of jurors voted for the indictment pursuant to Section 940.

5 (i) If a defendant makes a timely and successful challenge to  
6 the Attorney General's right to convene a special grand jury by  
7 clearly demonstrating that the charges brought are not addressed  
8 by subdivision (c), the court shall dismiss the indictment without  
9 prejudice to the Attorney General, who may bring the same or  
10 other charges against the defendant at a later date via another  
11 special grand jury properly convened, or a regular grand jury, or  
12 by any other procedure available.

13 (j) Unless otherwise set forth in this section, a law applying to  
14 a regular grand jury impaneled pursuant to Section 23 of Article  
15 I of the California Constitution shall apply to a special grand jury  
16 unless the application of the law to a special grand jury would  
17 substantially interfere with the execution of one or more of the  
18 provisions of this section. If there is substantial interference, the  
19 provision governing the special grand jury will govern.

20 (e)

21 (k) Upon certification by the Attorney General, a statement of  
22 the costs directly related to the impanelment and activities of the  
23 grand jury pursuant to subdivision (b) from the presiding judge of  
24 the superior court where the grand jury was impaneled shall be  
25 submitted for state reimbursement of the costs to the county. To  
26 be reimbursed, the costs shall be itemized, and be no more than  
27 what would be charged to a regularly impaneled grand jury  
28 convened by the county pursuant to Section 23 of Article I of the  
29 California Constitution, unless an alternative payment arrangement  
30 is agreed upon by the county and the Attorney General.

31 (l) A defendant convicted on charges brought by a special grand  
32 jury pursuant to this section shall pay a fine of five hundred dollars  
33 (\$500), which shall be assessed by the court and transmitted to  
34 the Attorney General's Special Grand Jury Fund, which is hereby  
35 established in the State Treasury to be used upon appropriation  
36 of the Legislature.