

**Introduced by Senator Stone**

February 19, 2016

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An act to ~~amend~~ *amend, repeal, and add* Section 933.05 of the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1292, as amended, Stone. Grand juries: reports.

(1) Existing law sets forth the duties of the grand jury *of each county*. Existing law requires the grand jury to 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. Existing law authorizes a grand jury to 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.

~~This bill would require a grand jury to request a subject person or entity to come before the grand jury as described above. The bill would authorize a grand jury to disclose the factual data used in making its findings during discussions conducted pursuant to these provisions.~~

~~This bill would authorize a grand jury to provide to a subject person or entity for comment an administrative draft of that portion of the grand jury's report relating to that subject person or entity. The bill would require an administrative draft provided pursuant to this provision to include proposed grand jury findings, would authorize the draft to include the factual data utilized in making the grand jury's findings, and would prohibit the draft from including the grand jury's~~

~~recommendations. Within a time period determined by the grand jury, but no sooner than 10 days after the grand jury submits an administrative draft of its report to a subject person or entity for comment, the bill would authorize the subject person or entity to file with the grand jury written comments on the findings and data included in the administrative draft pertaining to that subject person or entity. The bill would prohibit an officer, agency, department, or governing body of a public agency from disclosing any contents of the administrative draft of the report prior to the public release of the final report.~~

*This bill would delete the authority of a grand jury to request a subject person or entity to come before it for purposes of reading and discussing the findings of a grand jury report. The bill would instead require a grand jury to conduct at least one exit interview of an official or other responsible representative of each entity to which recommendations will be directed in a final grand jury report. The bill would authorize the grand jury, with the court's approval, to provide to the exit interviewee a copy of the draft findings related to that entity and would allow the subject entity to provide written comments to the grand jury concerning the draft findings within a time to be determined by the grand jury, but at least 5 working days after providing the draft findings to the exit interviewee. The bill would require any draft findings given to the exit interviewee to remain confidential, would prohibit those findings from being distributed to anyone outside the entity prior to or after the release of the final report, and would prohibit the exit interviewee and any board, officer, employee, or agent of the entity from publicly revealing any other information obtained during the exit interview prior to the public release of the report.*

Existing law requires a grand jury to provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity 2 working days prior to its public release and after the approval of the presiding judge.

~~This bill would instead require a grand jury to provide to the affected agency for comment~~ *entity a copy of the portion of the grand jury report relating to that person or entity no later than 10 6 working days prior to its public release and after the approval of the presiding judge. The bill would authorize all written comments of the affected agency to be submitted the subject person or entity to submit a preliminary response on behalf of the affected entity to the presiding judge of the superior court who impaneled the grand jury jury, with a copy of that preliminary response submitted to the grand jury, no later than 10 6 working days*

after receipt of a copy of the grand jury final report by the affected agency. The bill would require ~~a copy of all written comments by the affected agency to be placed on file as part of the contents of the applicable~~ *the grand jury to release, when the final report is publicly released, a copy of any preliminary response that relates to the final report and included in the public release of the final report. either by posting the preliminary response on an Internet Web site or by electronic transmission with the final report, as specified.*

(2) The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate.

This bill would authorize the governing body of an affected ~~agency~~ *entity* to meet in closed session to discuss and prepare written comments of the affected ~~agency~~ *entity* to the *confidential draft* findings and ~~factual data contained in an administrative draft~~ *the facts related to those confidential draft findings* of the grand jury report and a ~~grand jury final report~~ submitted for comment to the entity by ~~a~~ *the* grand jury pursuant to the provisions described above. *The bill would also authorize the governing body of an affected entity to meet in closed session to discuss and prepare a written preliminary response to a grand jury final report submitted to the entity by the grand jury pursuant to the provisions described above.* The bill would require, if a legislative body of a local agency meets to discuss the final report of the grand jury at either a regular or special meeting after the public release of a grand jury final report, the legislative body to do so in a meeting conducted pursuant to the Ralph M. Brown Act unless exempted from this requirement by some other provision of law.

(3) *This bill would make its provisions operative beginning July 1, 2017.*

(3)

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 933.05 of the Penal Code is amended to~~  
2     ~~read:~~

3     ~~933.05. (a) For purposes of subdivision (b) of Section 933, as~~  
4     ~~to each grand jury finding, the responding person or entity shall~~  
5     ~~indicate one of the following:~~

6     ~~(1) The respondent agrees with the finding.~~

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

11    ~~(b) For purposes of subdivision (b) of Section 933, as to each~~  
12    ~~grand jury recommendation, the responding person or entity shall~~  
13    ~~report one of the following actions:~~

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

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

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

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

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

37    ~~(d) (1) A grand jury shall request a subject person or entity to~~  
38    ~~come before the grand jury for the purpose of reading and~~

1 discussing the findings of the grand jury report that relates to that  
2 person or entity in order to verify the accuracy of the findings prior  
3 to their release.

4 (2) A grand jury may disclose the factual data used in making  
5 its findings during discussions conducted pursuant to paragraph  
6 (1).

7 (3) A grand jury may provide to a subject person or entity for  
8 comment an administrative draft of that portion of the grand jury's  
9 report relating to that subject person or entity. An administrative  
10 draft provided pursuant to this paragraph shall include proposed  
11 grand jury findings, may include the factual data utilized in making  
12 the grand jury's findings, and shall not include the grand jury's  
13 recommendations. Within a time period determined by the grand  
14 jury, but no sooner than 10 days after the grand jury submits an  
15 administrative draft of its report to a subject person or entity for  
16 comment, the subject person or entity may file with the grand jury  
17 written comments on the findings and data included in the  
18 administrative draft pertaining to that subject person or entity. An  
19 officer, agency, department, or governing body of a public agency  
20 shall not disclose any contents of the administrative draft of the  
21 report prior to the public release of the final report.

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

27 (f) A grand jury shall provide to the affected agency for  
28 comment a copy of the portion of the grand jury report relating to  
29 that person or entity no later than 10 days prior to its public release  
30 and after the approval of the presiding judge. All written comments  
31 of the affected agency may be submitted to the presiding judge of  
32 the superior court who impaneled the grand jury no later than 10  
33 days after receipt of a copy of the grand jury final report by the  
34 affected agency. A copy of all written comments by the affected  
35 agency shall be placed on file as part of the contents of the  
36 applicable grand jury final report and included in the public release  
37 of the final report. An officer, agency, department, or governing  
38 body of a public agency shall not disclose any contents of the  
39 report prior to the public release of the final report.

~~(g) (1) Notwithstanding any other law, except as provided in paragraph (2), the governing body of an affected agency may meet in closed session to discuss and prepare written comments of the affected agency to both of the following:~~

~~(A) The findings and factual data contained in an administrative draft of the grand jury report submitted for comment by a grand jury pursuant to paragraph (3) of subdivision (d).~~

~~(B) A grand jury final report submitted for comment by a grand jury pursuant to subdivision (f).~~

~~(2) If the legislative body of a local agency meets to discuss the final report of the grand jury at either a regular or special meeting after the public release of a grand jury final report, the legislative body shall do so in a meeting conducted pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) unless exempted from this requirement by some other provision of law.~~

*SECTION 1. Section 933.05 of the Penal Code is amended to read:*

933.05. (a) For purposes of subdivision (b) of Section 933, 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 (b) of Section 933, 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

1 when applicable. This timeframe shall not exceed six months from  
2 the date of publication of the grand jury report.

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

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

15 (d) A grand jury may request a subject person or entity to come  
16 before the grand jury for the purpose of reading and discussing  
17 the findings of the grand jury report that relates to that person or  
18 entity in order to verify the accuracy of the findings prior to their  
19 release.

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

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

31 (g) *This section shall become inoperative on July 1, 2017, and,*  
32 *as of January 1, 2018, is repealed, unless a later enacted statute,*  
33 *that becomes operative on or before January 1, 2018, deletes or*  
34 *extends the dates on which it becomes inoperative and is repealed.*

35 SEC. 2. Section 933.05 is added to the Penal Code, to read:

36 933.05. (a) For purposes of subdivision (b) of Section 933, as  
37 to each grand jury finding, the responding person or entity shall  
38 indicate one of the following:

39 (1) The respondent agrees with the finding.

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

5     (b) *For purposes of subdivision (b) of Section 933, as to each*  
6 *grand jury recommendation, the responding person or entity shall*  
7 *report one of the following actions:*

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

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

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

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

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

30     (d) (1) *A grand jury shall conduct at least one exit interview*  
31 *of an official or other responsible representative of each entity to*  
32 *which recommendations will be directed in a final grand jury*  
33 *report. The grand jury shall read to, and discuss with, the exit*  
34 *interviewee the draft findings of the report that relate to that entity*  
35 *in order to verify the accuracy of the findings.*

36        (2) *The grand jury may also discuss with the exit interviewee*  
37 *the facts in that report that support one or more of those findings.*

38        (3) *With the court's approval, the grand jury may provide to*  
39 *the exit interviewee a copy of the draft findings related to that*  
40 *entity and may allow the subject entity to provide written comments*



1 *to the grand jury concerning the draft findings within a time to be*  
2 *determined by the grand jury, but at least five working days after*  
3 *providing the draft findings to the exit interviewee.*

4 *(4) The grand jury shall not reveal to the exit interviewee the*  
5 *name of any person, or another fact that identifies any person,*  
6 *who provided information to the grand jury.*

7 *(5) Any draft findings given to the exit interviewee shall remain*  
8 *confidential and shall not be distributed to anyone outside the*  
9 *entity prior to or after the release of the final report. The exit*  
10 *interviewee and any board, officer, employee, or agent of the entity*  
11 *shall not publicly reveal any other information obtained during*  
12 *the exit interview prior to the public release of the report.*

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

18 *(f) A grand jury shall provide to the affected entity a copy of*  
19 *the portion of the grand jury report relating to that person or entity*  
20 *no later than six working days prior to its public release and after*  
21 *the approval of the presiding judge. The subject person or entity*  
22 *may submit a preliminary response on behalf of the affected entity*  
23 *to the presiding judge of the superior court who impaneled the*  
24 *grand jury, with a copy of that preliminary response submitted to*  
25 *the grand jury, no later than six working days after receipt of a*  
26 *copy of the grand jury final report by the affected entity. The grand*  
27 *jury shall, when the final report is publicly released, also release*  
28 *a copy of any preliminary response that relates to the final report*  
29 *either by posting the preliminary response on an Internet Web site*  
30 *or by electronic transmission with the final report. If the grand*  
31 *jury distributes printed copies of the report, the preliminary*  
32 *response or a citation to the Internet Web site where the report*  
33 *and preliminary response, if any, are posted shall be included with*  
34 *or in the report. A board, officer, employee, agent, department, or*  
35 *governing body of the entity shall not disclose any contents of the*  
36 *report prior to the public release of the final report.*

37 *(g) (1) Notwithstanding any other law, except as provided in*  
38 *paragraph (2), the governing body of an affected entity may meet*  
39 *in closed session to do both of the following:*

1 (A) Discuss and prepare written comments of the affected entity  
2 to the confidential draft findings and the facts related to those  
3 confidential draft findings of the grand jury report submitted to  
4 the entity by the grand jury pursuant to paragraph (3) of  
5 subdivision (d).

6 (B) Discuss and prepare a written preliminary response to a  
7 grand jury final report submitted to the entity by the grand jury  
8 pursuant to subdivision (f).

9 (2) If the legislative body of a local agency meets to discuss the  
10 final report of the grand jury at either a regular or special meeting  
11 after the public release of a grand jury final report, the legislative  
12 body shall do so in a meeting conducted pursuant to the Ralph M.  
13 Brown Act (Chapter 9 (commencing with Section 54950) of Part  
14 1 of Division 2 of Title 5 of the Government Code) unless exempted  
15 from this requirement by some other law.

16 (h) This section shall become operative on July 1, 2017.

17 ~~SEC. 2.~~

18 SEC. 3. The Legislature finds and declares that Section 1 of  
19 this act, which amends Section 933.05 of the Penal Code, imposes  
20 a limitation on the public's right of access to the meetings of public  
21 bodies or the writings of public officials and agencies within the  
22 meaning of Section 3 of Article I of the California Constitution.  
23 Pursuant to that constitutional provision, the Legislature makes  
24 the following findings to demonstrate the interest protected by this  
25 limitation and the need for protecting that interest:

26 In order to protect the confidentiality of grand jury investigations  
27 and reports, it is necessary for this act to take effect.