

AMENDED IN ASSEMBLY MARCH 13, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 163**

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**Introduced by Assembly Member Baugh**

(Principal coauthors: Senators Mountjoy, Burton, and  
Johannessen)

**(Coauthors: Assembly Members Baldwin, Bordonaro,  
Campbell, Escutia, Goldsmith, House, Kuehl, Leach,  
Leonard, Margett, Migden, Miller, Morrissey, Oller, Perata,  
Richter, Runner, Villaraigosa, Washington, and Woods)**

(Coauthors: Senators Haynes, Johnson, and Knight)

January 23, 1997

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An act to add Section 939.71 to the Penal Code, relating to grand juries.

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, Baugh. Grand juries: exculpatory evidence.

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

This bill would require the prosecutor, if he or she is aware of exculpatory evidence, to ~~disclose and, if feasible, present that evidence to~~ *inform the grand jury of the nature and*

*existence of this evidence and of the duties of the grand jury as specified above. The bill would provide that failure to disclose and present exculpatory evidence as required by this provision comply with this provision shall be grounds for dismissal of the indictment.*

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

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

1 SECTION 1. Section 939.71 is added to the Penal  
2 Code, to read:  
3 939.71. (a) If the prosecutor is aware of exculpatory  
4 evidence, the prosecutor shall ~~disclose and, if feasible,~~  
5 ~~present that evidence to the grand jury. Failure to~~  
6 ~~disclose and present exculpatory evidence as required by~~  
7 *inform the grand jury of its nature and existence. Once*  
8 *the prosecutor has informed the grand jury of*  
9 *exculpatory evidence pursuant to this section, the*  
10 *prosecutor shall inform the grand jury of its duties under*  
11 *Section 939.7. Failure to comply with the provisions of this*  
12 *section shall be grounds for dismissal of the indictment.*  
13 (b) For purposes of this section, “exculpatory  
14 evidence” includes, but is not limited to, evidence  
15 *reasonably* tending to negate guilt ~~or tending to show that~~  
16 ~~a witness called by the prosecution is not credible..~~

