

AMENDED IN ASSEMBLY MARCH 31, 1997

AMENDED IN ASSEMBLY MARCH 13, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 163

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

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 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 *if a failure to comply with this provision results in substantial prejudice, it shall be grounds for dismissal of the portion of the indictment related to that evidence.*

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 inform the grand jury of its
5 nature and existence. Once the prosecutor has informed
6 the grand jury of exculpatory evidence pursuant to this
7 section, the prosecutor shall inform the grand jury of its
8 duties under ~~Section 939.7. Failure to comply with the~~
9 ~~provisions of this section shall be grounds for dismissal of~~
10 ~~the indictment.~~

11 (b) ~~For purposes of this section, “exculpatory~~
12 ~~evidence” includes, but is not limited to, evidence~~
13 ~~reasonably tending to negate guilt. Section 939.7. If a~~
14 ~~failure to comply with the provisions of this section results~~
15 ~~in substantial prejudice, it shall be grounds for dismissal~~
16 ~~of the portion of the indictment related to that evidence.~~

17 (b) *It is the intent of the Legislature by enacting this*
18 *section to codify the holding in Johnson v. Superior Court,*
19 *15 Cal. 3d 248, and to affirm the duties of the grand jury*
20 *pursuant to Section 939.7.*

