

AMENDED IN ASSEMBLY APRIL 11, 2012

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1763

Introduced by Assembly Member Davis

February 17, 2012

An act to amend ~~Section~~ *Sections 781 and 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 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 and were conducted by a single defendant or multiple defendants acting in concert.~~ 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 781 of the Penal Code is amended to
2 read:

3 781. ~~When~~ Except as provided in Section 923, when a public
4 offense is committed in part in one jurisdictional territory and in
5 part in another, or the acts or effects thereof constituting or requisite
6 to the consummation of the offense occur in two or more
7 jurisdictional territories, the jurisdiction of ~~such~~ the offense is in
8 any competent court within either jurisdictional territory.

9 SECTION 1.

10 SEC. 2. Section 923 of the Penal Code is amended to read:

11 923. (a) Whenever the Attorney General considers that the
12 public interest requires, he or she may, with or without the
13 concurrence of the district attorney, direct the grand jury to convene
14 for the investigation and consideration of those matters of a
15 criminal nature that he or she desires to submit to it. He or she may
16 take full charge of the presentation of the matters to the grand jury,
17 issue subpoenas, prepare indictments, and do all other things
18 incident thereto to the same extent as the district attorney may do.

19 ~~(b) Whenever the Attorney General considers that the public~~
20 ~~interest requires, he or she may, with or without the concurrence~~
21 ~~of the district attorney, petition the court to impanel a special grand~~
22 ~~jury to investigate, consider, or issue indictments for any of the~~
23 ~~activities set forth in subdivision (c). The petition may be presented~~
24 ~~under seal and shall set forth, in general terms, the grounds~~
25 ~~justifying the request as set forth in subdivision (c). The court shall~~
26 ~~grant the petition if the petition generally demonstrates the Attorney~~
27 ~~General's belief that a crime addressed under subdivision (c) has~~
28 ~~been committed. The Attorney General may take full charge of~~
29 ~~the presentation of the matters to the grand jury, issue subpoenas,~~
30 ~~prepare indictments, and do all other things incident thereto to the~~
31 ~~same extent as the district attorney may do.~~

1 (c) ~~The following activities are subject to indictment by a special~~
2 ~~grand jury impaneled pursuant to subdivision (b):~~

3 (1) ~~Activities subject to fine, imprisonment, or asset forfeiture~~
4 ~~under Section 14107 of the Welfare and Institutions Code.~~

5 (2) ~~Activities that involve, in whole or in part, fraud or theft~~
6 ~~that result in the direct or indirect loss of one hundred thousand~~
7 ~~dollars (\$100,000) or more in public money. For purposes of this~~
8 ~~subdivision, “public money” means fees or taxes of any kind~~
9 ~~collected by a state governmental agency or political subdivision~~
10 ~~of the state, or collected by a county or city governmental agency~~
11 ~~in the state.~~

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

15 (4) ~~An activity that could result, upon conviction of potential~~
16 ~~charges reasonably contemplated by the Attorney General to be~~
17 ~~included in the proposed indictment, in a sentencing enhancement~~
18 ~~under Section 186.11.~~

19 (d) ~~A special grand jury requested by the Attorney General~~
20 ~~pursuant to subdivision (b) may be impaneled in the Counties of~~
21 ~~Fresno, Los Angeles, Sacramento, San Diego, or San Francisco,~~
22 ~~at the Attorney General’s discretion. A special grand jury~~
23 ~~impaneled under this section shall serve for a term of 18 months~~
24 ~~unless dismissed earlier by the Attorney General. Upon notice by~~
25 ~~the Attorney General to the grand jury coordinator or presiding~~
26 ~~judge of the county where the special grand jury is impaneled, the~~
27 ~~special grand jury’s term can be extended by up to six months.~~

28 (e) ~~For special grand juries impaneled pursuant to subdivision~~
29 ~~(b), and notwithstanding Section 1200 or 1401 of the Evidence~~
30 ~~Code, the Attorney General may establish a foundation for~~
31 ~~documentary evidence in order to introduce that evidence to the~~
32 ~~special grand jury for consideration, if the documents were acquired~~
33 ~~through a grand jury subpoena or a court-approved search warrant,~~
34 ~~and a law enforcement officer or investigator testifies that the~~
35 ~~documents were obtained in that manner.~~

36 (1) ~~For documents that were obtained by a grand jury subpoena~~
37 ~~and which the Attorney General seeks to introduce under this~~
38 ~~subdivision, a law enforcement officer or investigator shall inform~~
39 ~~the grand jury if the custodian of records for the documents~~
40 ~~supplied an affidavit attesting to the manner in which the records~~

1 were maintained. The absence of an affidavit, however, shall not
2 preclude their introduction for the grand jury to consider.

3 (2) For documents that were obtained by a court-approved search
4 warrant and which the Attorney General seeks to introduce under
5 this subdivision, a law enforcement officer or investigator shall
6 describe the manner in which the documents were kept at the site
7 of the search warrant. The testifying law enforcement officer or
8 investigator may obtain this information from another officer or
9 investigator that was present at the search warrant site when the
10 documents were obtained. The manner in which the documents
11 were kept at the site where they were obtained shall have no
12 bearing on the Attorney General's ability to introduce the
13 documents to the grand jury.

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

21 (f) For special grand juries impaneled pursuant to subdivision
22 (b), where the Attorney General, in his or her discretion, reasonably
23 believes there are more than 10 victims of a crime attributable to
24 the same defendant, or defendants acting in concert, and indictable
25 by a special grand jury pursuant to subdivision (b), the victims
26 need not testify to the special grand jury in order for the prosecutor
27 to establish a count or charge in the indictment if a peace officer
28 or investigator, certified in the same manner as in paragraph (3)
29 of subdivision (e), testifies with respect to the dollar loss amount
30 suffered by each victim and any other related information with
31 respect to each victim. Nothing in this subdivision shall prevent
32 the prosecutor from calling some or all of the victims to testify for
33 the grand jury.

34 (g) For special grand juries impaneled pursuant to subdivision
35 (b), the Attorney General may issue subpoenas for documents and
36 witnesses located anywhere in the state in order to obtain evidence
37 to present to the special grand jury. The special grand jury may
38 hear all evidence in the form of testimony or physical evidence
39 presented to them, irrespective of the location of the witness or
40 physical evidence prior to subpoena. The special grand jury

~~impaneled pursuant to subdivision (b) may indict a person or persons with charges for crimes that occurred in counties other than where the special grand jury is impaneled. The indictment shall then be submitted to the appropriate court in any of the counties where any of the charges could otherwise have been properly brought.~~

~~(h) Notwithstanding Section 944, an indictment found by a special grand jury and endorsed as a true bill by the special grand jury foreperson, may be presented to the appropriate court, as set forth in subdivision (g), solely by the prosecutor within five court days of the endorsement of the indictment. For indictments presented to the court in this manner, the prosecutor shall also file with the court or court clerk, at the time of presenting the indictment, an affidavit signed by the special grand jury foreperson attesting that all the jurors who voted on the indictment heard all of the evidence presented by the prosecutor, and that a proper number of jurors voted for the indictment pursuant to Section 940.~~

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

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

(b) Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, petition the court to impanel a special grand jury to investigate, consider, or issue indictments for any of the activities subject to fine, imprisonment, or asset forfeiture under Section 14107 of the Welfare and Institutions Code. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other

1 things incident thereto to the same extent as the district attorney
2 may do. If the evidence presented to the grand jury shows the
3 commission of an offense or offenses for which jurisdiction would
4 be in a county other than the county where the grand jury is
5 impaneled, the Attorney General, with or without the concurrence
6 of the district attorney in the county with jurisdiction over the
7 offense or offenses, may petition the court to impanel a special
8 grand jury in that county. Notwithstanding any other provision of
9 law, upon request of the Attorney General, a grand jury convened
10 by the Attorney General pursuant to this subdivision may submit
11 confidential information obtained by that grand jury, including,
12 but not limited to documents and testimony, to a second grand jury
13 that has been impaneled at the request of the Attorney General
14 pursuant to this subdivision in any other county where venue for
15 an offense or offenses shown by evidence presented to the first
16 grand jury is proper. All confidentiality provisions governing
17 information, testimony, and evidence presented to a grand jury
18 shall be applicable except as expressly permitted by this
19 subdivision. The Attorney General shall inform the grand jury that
20 transmits confidential information and the grand jury that receives
21 confidential information of any exculpatory evidence, as required
22 by Section 939.71. The grand jury that transmits information to
23 another grand jury shall include the exculpatory evidence disclosed
24 by the Attorney General in the transmission of the confidential
25 information. The Attorney General shall inform both the grand
26 jury transmitting the confidential information and the grand jury
27 receiving that information of their duties under Section 939.7. A
28 special grand jury convened pursuant to this subdivision shall be
29 in addition to the other grand juries authorized by this chapter or
30 Chapter 2 (commencing with Section 893).

31 (c) Whenever the Attorney General considers that the public
32 interest requires, he or she may, with or without the concurrence
33 of the district attorney, impanel a special grand jury to investigate,
34 consider, or issue indictments in matters in which there are
35 multiple activities, in which fraud or theft is a material element,
36 that have occurred in more than one county and conducted either
37 by a single defendant or multiple defendants acting in concert.

38 (1) This special grand jury may be impaneled in the Counties
39 of Fresno, Los Angeles, Sacramento, San Diego, or San Francisco,
40 at the Attorney General's discretion. A special grand jury

1 impaneled under this section shall serve for a term of 18 months
2 unless dismissed earlier by the Attorney General. Upon notice by
3 the Attorney General to the grand jury coordinator or presiding
4 judge of the county where the special grand jury is impaneled, the
5 special grand jury's term can be extended by up to six months.
6 This special grand jury is subject to the requirements of Sections
7 888.2, 893 and 940.

8 (2) For special grand juries impaneled pursuant to this
9 subdivision, the Attorney General may issue subpoenas for
10 documents and witnesses located anywhere in the state in order
11 to obtain evidence to present to the special grand jury. The special
12 grand jury may hear all evidence in the form of testimony or
13 physical evidence presented to the special grand jury, irrespective
14 of the location of the witness or physical evidence prior to
15 subpoena. The special grand jury impaneled pursuant to this
16 subdivision may indict a person or persons with charges for crimes
17 that occurred in counties other than where the special grand jury
18 is impaneled. The indictment shall then be submitted to the
19 appropriate court in any of the counties where any of the charges
20 could otherwise have been properly brought. The court where the
21 indictment is filed under this subdivision shall have proper
22 jurisdiction over all counts in the indictment.

23 (3) Notwithstanding Section 944, an indictment found by a
24 special grand jury and endorsed as a true bill by the special grand
25 jury foreperson, may be presented to the appropriate court, as set
26 forth in paragraph (2), solely by the prosecutor and within five
27 court days of the endorsement of the indictment. For indictments
28 presented to the court in this manner, the prosecutor shall also
29 file with the court or court clerk, at the time of presenting the
30 indictment, an affidavit signed by the special grand jury foreperson
31 attesting that all the jurors who voted on the indictment heard all
32 of the evidence presented by the prosecutor, and that a proper
33 number of jurors voted for the indictment pursuant to Section 940.
34 The Attorney General's Office shall be responsible for prosecuting
35 an indictment produced by the special grand jury.

36 (4) If a defendant makes a timely and successful challenge to
37 the Attorney General's right to convene a special grand jury by
38 clearly demonstrating that the charges brought are not
39 encompassed by this subdivision, the court shall dismiss the
40 indictment without prejudice to the Attorney General, who may

1 *bring the same or other charges against the defendant at a later*
2 *date by way of another special grand jury, properly convened, or*
3 *a regular grand jury, or by any other procedure available.*

4 (5) *The provisions of Section 939.71 shall apply to the special*
5 *grand jury.*

6 (6) *Unless otherwise set forth in this section, a law applying to*
7 *a regular grand jury impaneled pursuant to Section 23 of Article*
8 *I of the California Constitution shall apply to a special grand jury*
9 *unless the application of the law to a special grand jury would*
10 *substantially interfere with the execution of one or more of the*
11 *provisions of this section. If there is substantial interference, the*
12 *provision governing the special grand jury will govern.*

13 (7) *A special grand jury convened pursuant to this subdivision*
14 *shall be in addition to the other grand juries authorized by this*
15 *chapter or Chapter 2 (commencing with Section 893).*

16 ~~(k)~~

17 (d) (1) Upon certification by the Attorney General, a statement
18 of the costs directly related to the impanelment and activities of
19 the grand jury pursuant to ~~subdivision~~ subdivisions (b) and (c)
20 from the presiding judge of the superior court where the grand jury
21 was impaneled shall be submitted for state reimbursement of the
22 costs to the county. To be reimbursed, the costs shall be itemized,
23 and be no more than what would be charged to a regularly
24 impaneled grand jury convened by the county pursuant to Section
25 23 of Article I of the California Constitution, unless an alternative
26 payment arrangement is agreed upon by the county and the
27 Attorney General.

28 ~~(f)~~

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