

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

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 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 impanel 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~~ *impanel* a special statewide grand jury, as prescribed, for cases involving fraud or theft that occur in more than one county and were conducted by a single defendant or multiple defendants acting in concert.

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

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

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

18 (b) Whenever the Attorney General considers that the public
19 interest requires, he or she may, with or without the concurrence
20 of the district attorney, petition the court to impanel a special grand
21 jury to investigate, consider, or issue indictments for any of the
22 activities subject to fine, imprisonment, or asset forfeiture under
23 Section 14107 of the Welfare and Institutions Code. He or she
24 may take full charge of the presentation of the matters to the grand
25 jury, issue subpoenas, prepare indictments, and do all other things
26 incident thereto to the same extent as the district attorney may do.
27 If the evidence presented to the grand jury shows the commission
28 of an offense or offenses for which jurisdiction would be in a
29 county other than the county where the grand jury is impaneled,
30 the Attorney General, with or without the concurrence of the
31 district attorney in the county with jurisdiction over the offense or
32 offenses, may petition the court to impanel a special grand jury in
33 that county. Notwithstanding any other law, upon request of the
34 Attorney General, a grand jury convened by the Attorney General
35 pursuant to this subdivision may submit confidential information

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

21 (c) Whenever the Attorney General considers that the public
22 interest requires, he or she may, with or without the concurrence
23 of the district attorney, impanel a special statewide grand jury to
24 investigate, consider, or issue indictments in *any* matters in which
25 there are ~~multiple~~ *two or more* activities, in which fraud or theft
26 is a material element, that have occurred in more than one county,
27 and were conducted either by a single defendant or multiple
28 defendants acting in concert.

29 (1) This special statewide grand jury may be impaneled in the
30 Counties of Fresno, Los Angeles, Sacramento, San Diego, or San
31 Francisco, at the Attorney General's discretion. When impaneling
32 a special statewide grand jury pursuant to this subdivision, the
33 Attorney General shall use an existing regularly impaneled grand
34 jury to serve as the special statewide grand jury and make
35 arrangements with the grand jury coordinator in the applicable
36 county, or with the presiding judge or whoever is charged with
37 scheduling the grand jury hearings, in order to ensure orderly
38 coordination and use of the grand jurors' time for both regular
39 grand jury duties and special statewide grand jury duties. Whenever
40 the Attorney General impanels a special statewide grand jury, the

1 prosecuting attorney representing the Attorney General shall inform
2 the special statewide grand jury at the outset of the case that the
3 special *statewide* grand jury is acting as a special statewide grand
4 jury with statewide jurisdiction.

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

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

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

1 date by way of another special statewide grand jury, properly
2 convened, or a regular grand jury, or by any other procedure
3 available.

4 (5) The provisions of Section 939.71 shall apply to the special
5 statewide 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 statewide
9 grand jury unless the application of the law to a special statewide
10 grand jury would substantially interfere with the execution of one
11 or more of the provisions of this section. If there is substantial
12 interference, the provision governing the special statewide grand
13 jury will govern.

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

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