
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1292 **Hearing Date:** April 12, 2016
Author: Stone
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Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Grand Juries: Reports*

HISTORY

Source: California Special Districts Association

Prior Legislation: AB 829 (Thomson) – Chapter 443, Statutes of 1997
SB 1457 (Kopp) – Chapter 1170, Statutes of 1996

Support: Association of California Healthcare Districts; California Association of Recreation and Park Districts; California Fire Chiefs Association; California Grand Jurors' Association; Fire Districts Association of California

Opposition: California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to: (1) require each grand jury to hold an exit interview with the subject of their investigations to discuss the findings of the report, as specified; (2) allow a grand jury to provide a draft of their findings to the subject of the report, in order to receive initial comments on the draft, as specified; and (3) grant the subject of an investigation the option to provide comments on the report that will be released and posted with the grand jury report, as specified.

Existing law provides that one or more grand juries shall be drawn and summoned at least once per year in each county. (California Constitution Article I, Section 23.)

Existing law requires that in all counties there shall be at least one grand jury drawn and impaneled in each year. (Penal Code § 905.)

Existing law provides that when the grand jury is impaneled and sworn, it shall be charged by the court and the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties and as to any charges for public offenses returned to the court or likely to come before the grand jury. (Penal Code § 914(a).)

Existing law provides that the grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment. (Penal Code § 917.)

Existing law states that if a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county has been committed, he may declare it to his fellow jurors, who

may investigate it. (Penal Code § 918.)

Existing law states that a grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted. (Penal Code § 919(a).)

Existing law states that a grand jury shall inquire into the condition and management of the public prisons within the county. (Penal Code § 919(b).)

Existing law states that a grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county. (Penal Code § 919(c).)

Existing law states that a grand jury may investigate and inquire into all sales and transfers of land, and into the ownership of land, which, under the state laws, might or should escheat to the State of California, as specified. (Penal Code § 920.)

Existing law states that a grand jury is entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county. (Penal Code § 921.)

Existing law states that the grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. (Penal Code § 925.)

Existing law states that the grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit. The grand jury may investigate and report upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected agency. As used in this section, “joint powers agency” means an agency described in Section 6506 of the Government Code whose jurisdiction encompasses all or part of a county. (Penal Code § 925a.)

Under existing law a grand jury may, and when requested by the board of supervisors shall, investigate and report upon the needs for increase or decrease in salaries of the county-elected officials. A copy of such report shall be transmitted to the board of supervisors. (Penal Code § 927.)

Under existing law every grand jury may investigate and report upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the

method or system of performing the duties of, the several offices. Such investigation and report shall be conducted selectively each year. The grand jury shall cause a copy of such report to be transmitted to each member of the board of supervisors of the county. (Penal Code § 928.)

Under existing law each grand jury shall 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. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report. (Penal Code § 933(a).)

Under existing law one copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity. (Penal Code § 933(b).)

Under existing law no later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years. (Penal Code § 933(c).)

Under existing law 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.

(Penal Code § 933.05(a).)

Under existing law 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 when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(Penal Code § 933.05(b).)

Under existing law if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department. (Penal Code § 933.05(c).)

Under existing law a grand jury may 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. (Penal Code § 933.05 (d).)

Existing law requires that, during an investigation, the grand jury meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental. (Penal Code § 933.05 (e).)

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 two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report. (Penal Code § 933.05 (f).)

Existing law creates the Ralph M. Brown Act which 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. (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.)

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 five 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.

This bill would require a grand jury to provide to the affected entity a copy of the portion of the grand jury report relating to that person or entity no later than six working days prior to its public release and after the approval of the presiding judge. The bill would authorize 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, with a copy of that preliminary response submitted to the grand jury, no later than six working days after receipt of a copy of the grand jury final report by the affected agency. The bill would require the grand jury to release, when the final report is publicly released, a copy of any preliminary response that relates to the final report either by posting the preliminary response on an Internet Web site or by electronic transmission with the final report, as specified.

This bill would authorize the governing body of an affected entity to meet in closed session to discuss and prepare written comments of the affected entity to the confidential draft findings and the facts related to those confidential draft findings of the grand jury report-submitted-to the entity by 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.

This bill would make its provisions operative beginning July 1, 2017.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Civil grand juries serve as a watchdog over local governments. Each of California’s 58 counties has its own independent grand jury, made up of community volunteers. They are charged with performing investigations of local government agencies, which include city, county and special district governments. At the conclusion of their investigations, the grand juries publically release reports detailing their findings and making recommendations for the subjects of their investigation. These reports provide necessary information for the public to hold their local governments accountable.

While the majority of grand jury reports are accurate, occasionally there are reports that are made public that contain false or inaccurate information. Such reports are a disservice to the public, and are liable to undermine the credibility of an important grand jury system. SB 1292 promotes the integrity of the grand jury system and assists the grand jury in increasing the accuracy of their publically released reports, while

maintaining the fundamental principles of the civil grand jury as an independent watchdog.

SB 1292 will ensure that every grand jury has met with the subject of its reports, and give the public the benefit of seeing how its local governments respond to the reports at the time they are issued. The people are best served by a thorough process, and should know what their governments have to say about it.

2. Grand Juries in California

The California Supreme Court summarized the statutory scheme which regulates the grand jury process:

Each county must have at least one grand jury drawn and impaneled every year. (§ 905; see Cal. Const., art. I, § 23.) The grand jury consists of “the required number of persons returned from the citizens of the county before a court of competent jurisdiction,” and sworn to inquire into both “public offenses” within the county and “county matters of civil concern.” (§ 888; see § 888.2 [specifying “required number” of grand jurors based on county size]; see also §§ 904.4–904.8 [authorizing “additional” grand juries depending on county size].) This general authority over both criminal and civil matters involves three functions: (1) weighing criminal charges and deciding whether to present indictments (§ 917), (2) evaluating misconduct claims against public officials and deciding whether to formally seek their removal from office (§ 922), and (3) acting as the public’s “watchdog” by investigating and reporting upon local government affairs. (§§ 919–921, 925 et seq.; see *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1170 [245 Cal. Rptr. 774, 751 P.2d 1329] (McClatchy).) In counties with a single grand jury, that one body performs all three functions. (See 76 Ops.Cal.Atty.Gen. 181, 182 (1993) [concluding that any additional grand jury authorized by statute is restricted to criminal matters and may not perform civil oversight functions].)

In California, unlike other jurisdictions, the grand jury most often plays the civil oversight role. (*McClatchy*, supra, 44 Cal.3d 1162, 1170; see 1973 Grand Jury, supra, 13 Cal.3d 430, 436, fn. 4 [distinguishing federal grand juries insofar as they do not report on public affairs].) Many statutes identify specific topics of inquiry. In performing its functions, the grand jury operates in secret. (E.g., §§ 915, 924.2, 939; see § 911 [oath].) It may [730] retain auditors, appraisers and other experts (§ 926), and has subpoena power (§ 939.2; see § 921 [access to public records]). At the end of its term, the grand jury must issue a final report to the presiding judge of the superior court (§ 933, subd. (a)), documenting all findings therein. (§ 916; see 1973 Grand Jury, supra, 13 Cal.3d 430, 434 [interim report].)

(*People v. Garcia*, 52 Cal. 4th 706, at 729-30 (2011).)

3. Effect of This Bill

As stated above, in California, unlike some other American jurisdictions, the grand jury is a citizen “watchdog” group investigating and reporting on activities of local government. There are a number of local entities that can be investigated by a civil grand jury, including cities, counties, special districts, and an unknown number of elected officials. The California Supreme Court has confirmed the independence of the grand jury and the inherent value of its final report:

“The modern final report, containing the grand jury’s findings and recommendations on the subject of its investigations is the normal end product of its watchdog functions and is the only formal means by which the grand jury can hope to effectuate its recommendations.” (*McClatchy Newspapers v. Superior Court*, 44 Cal. 3d 1162, 1171-72 (1988).)

This bill changes procedures relating to a local entities involvement in the final report of the grand jury. Specifically, according to the sponsors and the author of this legislation, Senate Bill 1292 will:

1. Require each grand jury to hold an exit interview with the subject of their investigations to discuss the findings of the report.
2. Afford grand juries with the option of providing a draft of their findings to the subject of the report in order to receive initial comments on the draft.
3. Grant the subject of an investigation the option to provide comments on the report that will be released and posted with the grand jury report at the time it is made publically available.

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