

## Memorandum 99-46

### Trial Court Unification: Grand Jury Issues

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In connection with the Commission's work on trial court unification, the staff has been alerted to two sets of technical issues relating to selection of a grand jury:

(1) Issues relating to Penal Code Section 899, which calls for selection of a grand jury from "wards, judicial districts, or supervisorial districts." This statute was initially brought to our attention by Judicial Council staff, who received an inquiry about the propriety of using judicial districts to select a grand jury following unification.

(2) Issues stemming from obsolete cross-references in Penal Code Sections 908 and 908.1, which Professor J. Clark Kelso and one of his students uncovered in the course of research on implementation of trial court unification.

After providing background information on grand juries and the manner in which they are selected, we discuss these technical issues and make recommendations on how to proceed.

(Unless otherwise indicated, all further statutory references are to the Penal Code.)

#### FUNCTION OF A GRAND JURY

"The California grand jury is empowered to act in three basic areas: determining whether criminal indictments should be returned, determining whether to present formal accusations of misconduct against public officials requesting their removal from office, and acting as watchdog of the public by investigating and reporting upon the affairs of local government." *Farnow v. Superior Court*, 226 Cal. App. 3d 481, 488, 276 Cal. Rptr. 275 (1990) (citations omitted). "Significantly, the separate and distinct functions of watchdog and indictment grand juries are sometimes intermingled, in the sense that watchdog inquiries into alleged corruption may involve the weighing of possible criminal

indictments against county officials and others being investigated.” *McClatchy Newspapers v. Superior Court*, 44 Cal. 3d 1162, 1175, 751 P.2d 1329, 245 Cal. Rptr. (1988). In some counties, a single grand jury performs all of the grand jury functions, holding both civil and criminal sessions. Other counties have more than one grand jury, of which one is “charged and sworn to investigate or inquire into county matters of civil concern ....” (Section 888.)

Of the functions of a grand jury, “the watchdog role is by far the one most often played by the modern grand jury in California.” *McClatchy Newspapers v. Superior Court*, 44 Cal. 3d 1162, 1170, 751 P.2d 1329, 245 Cal. Rptr. (1988). In this role, the normal end product of a grand jury investigation is a report containing the grand jury’s findings and recommendations. “Grand juries have issued reports on the conduct of public officials and other matters pertaining to local governance for hundreds of years.” *Id.* at 1170-71. The grand jury’s report is the only formal means by which the grand jury can hope to effectuate its recommendations. *Id.* at 1170.

#### SELECTION OF A GRAND JURY

The process of selecting a grand jury is governed by a combination of statutes, constitutional provisions, and court rules, which are described below.

##### **Statutory Scheme**

A complicated collection of statutes govern selection of a grand jury in California. Different procedures apply under different circumstances.

*Standard procedure.* Before the start of each fiscal year, the superior court is to estimate the number of grand jurors needed for the upcoming year. (Section 895.) The court is then to select the grand jurors “by personal interview for the purpose of ascertaining whether they possess the [statutorily required] qualifications.” (Sections 893, 896.) The grand jury list for a county with a population exceeding four million is to contain the same number of persons as in the court’s estimate. (Section 898.) The names for this list “may be selected from the county at large.” (Section 899; Gov’t Code § 28022.) Elsewhere, the names for the grand jury list “shall be selected from the different wards, judicial districts, or supervisorial districts of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the lists.” (Section 899.) The grand jury list is to be kept separate from the trial jury list. *Id.* After receiving the list, the county clerk is to have the list,

including the name of the judge who selected each person on the list, published in a newspaper of general circulation. (Section 900.) The clerk then writes the name of each person on the list on a piece of paper (or a number corresponding to the name of each person on the list), puts the pieces of paper in a box, and draws the grand jury by selecting a certain number of pieces of paper from the box. (Sections 900-902, 908.2.) The presiding judge may also select up to ten persons from an existing grand jury to serve for a second year. (Section 901.)

*County with jury commissioner.* In a county with a jury commissioner (or a secretary of the judges of the superior court who performs the duties of jury commissioner), the jury commissioner annually compiles, in accordance with “written rules or instructions adopted by a majority of the judges of the superior court,” a list of persons qualified to serve as grand jurors for the upcoming fiscal year. (Section 903.1.) The list must “meet the requirements of Section 899.” (*Id.*) In preparing the list, the jury commissioner is to diligently inquire into the qualifications of potential grand jurors. (Section 903.2.) Upon receiving the list, the judges of the superior court are to select the grand jury for the year. (Section 903.3.) They “are not required to select any names from the list returned by the jury commissioner, but may, if in their judgment the due administration of justice requires, make all or any selections from among the body of persons in the county suitable and competent to serve as grand jurors regardless of the list returned by the jury commissioner.” (Section 903.4.)

*Additional grand jury.* Some counties are permitted to impanel more than one grand jury. For reasons the staff has yet to deduce, a special statute permits impanelment of one additional grand jury upon application of the district attorney in “any county having a population of more than 370,000 but less than 400,000 as established by Section 28020 of the Government Code ....” (Section 904.4.) Only Ventura County falls into this category. (See Gov’t Code § 28020.) This additional grand jury is to be chosen by the presiding judge of the superior court, by selecting persons at random from the list of trial jurors in civil and criminal cases and examining them to determine if they are competent to serve as grand jurors. (Section 904.4(b).) It “may inquire into any matters that are subject to grand jury inquiry and shall have the sole and exclusive jurisdiction to return indictments, except for any matters that the regular grand jury is inquiring into at the time of impanelment. (Section 904.4(d).) If a county is authorized to have an additional grand jury pursuant to this provision for counties of more than 370,000 but less than 400,000, as well as pursuant to another provision, the

county may have just one additional grand jury, chosen pursuant to whichever provision it prefers. (Section 904.4(e).)

Another statute authorizes the presiding judge of any county to impanel one additional grand jury at any time. (Section 904.6.) As under the special provision for counties of more than 370,000 but less than 400,000, this additional grand jury is to be chosen by the presiding judge of the superior court, by selecting persons at random from the list of trial jurors in civil and criminal cases and examining them to determine if they are competent to serve as grand jurors. (Section 904.6(b).) The functions of this additional grand jury are also identical to the functions of an additional grand jury chosen pursuant to the special provision for counties of more than 370,000 but less than 400,000. (Sections 904.4(d), 904.6(d).) Unlike the special provision, however, the provision authorizing any county to select an additional grand jury states:

It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned for that purpose. All persons selected for the additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county.

(Section 904.6(e).)

### **Constitutional Constraints**

Selection of a grand jury is also subject to constitutional constraints, at least if the grand jury holds criminal sessions. “There are two types of racially based challenges to the composition of ... grand juries: the claim of intentional discrimination and the claim of an absence of a fair cross-section of the community.” *People v. Corona*, 211 Cal. App. 3d 529, 534, 259 Cal. Rptr. 524 (1989).

Intentional discrimination in selection of a grand jury violates the constitutional right to equal protection. *Id.* It is “a grave constitutional trespass, possible only under color of state authority, and wholly within the power of the State to prevent.” *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986). The grand jury “controls not only the initial decision to indict, but also significant decisions such as how many counts to charge and whether to charge a greater or lesser offense, including the important decision to charge a capital crime.” *Campbell v. Louisiana*, 523 U.S. 392, 118 S. Ct. 1419, 1423 (1998). “The integrity of these decisions

depends on the integrity of the process used to select the grand jurors.” *Id.* “If that process is infected with racial discrimination, doubt is cast over the fairness of all subsequent decisions.” *Id.* Consequently, intentional discrimination in the selection of a grand jury is grounds for automatic reversal. “[D]iscrimination in the grand jury undermines the structural integrity of the criminal tribunal itself, and is not amenable to harmless-error review.” *Id.*

“The absence of a fair cross-section of the community in the selection of a grand jury is generally said to violate due process.” *People v. Corona*, 211 Cal. App. 3d at 535. “[O]fficial compilers of jury lists may drift into discrimination by not taking affirmative action to prevent it.” *People v. Superior Court (Dean)*, 38 Cal. App. 3d 966, 972, 113 Cal. Rptr. 732 (1974). Thus, in “formulating a panel for a grand jury endowed with the criminal indictment function, officials must adhere to a standard more stringent than mere abstention from intentional discrimination; they have an affirmative duty to develop and pursue procedures aimed at achieving a fair cross-section of the community.” *Id.*; see also *People v. Navarette*, 54 Cal. App. 3d 1064, 1073, 127 Cal. Rptr. 55 (1976). Violation of this fair cross-section requirement does not result in automatic reversal. Rather, courts are “bound by the general rule prohibiting reversal absent actual prejudice relating to the conviction.” *People v. Corona*, 211 Cal. App. 3d at 537.

## **Court Rules**

Penal Code Section 903.1 authorizes the judges of a superior court to “adopt such rules and instructions as may be necessary for the guidance of the jury commissioner” in preparing the grand jury list. Nonetheless, only San Luis Obispo County appears to have a local rule on grand jury selection. (Exhibit pp. 1-2.)

Section 17 of the Standards of Judicial Administration recommended by the Judicial Council (Appendix to California Rules of Court, Division 1) sets guidelines for selection of a grand jury selected to investigate civil matters:

17. (a) **[Definition]** “Regular grand jury” means a body of citizens of a county selected by the court to investigate matters of civil concern in the county, whether or not that body has jurisdiction to return indictments.

(b) **[Regular grand jury list]** The list of qualified candidates prepared by the jury commissioner to be considered for nomination to the regular grand jury should be obtained by one or more of the following methods:

(1) Names of members of the public obtained at random in the same manner as the list of trial jurors. However, the names obtained for nomination to the regular grand jury should be kept separate and distinct from the trial jury list, consistent with Penal Code Section 899.

(2) Recommendations for grand jurors that encompass a cross-section of the county's population base, solicited from a broad representation of community-based organizations, civil leaders, and superior court, municipal and justice court judges, referees, and commissioners.

(3) Applications from interested citizens solicited through the media or a mass mailing.

(c) **[Carry-over grand jurors]** The court is encouraged to consider carry-over grand jury selections under Penal Code section 901(b) to ensure broad-based representation.

(d) **[Nomination of grand jurors]** Judges who nominate persons for grand jury selection under Penal Code Section 903.4 are encouraged to select candidates from the list returned by the jury commissioner or otherwise to employ a nomination procedure to ensure broad-based representation from the community.

(e) **[Disfavored nominations]** Judges should not nominate to the grand jury a spouse or immediate family member (first degree of consanguinity) of any justice court, municipal court, or superior court judge, commissioner, referee, elected official, or department head of any city, county, or governmental entity subject to grand jury scrutiny.

Under these guidelines, the superior court judges retain considerable discretion in the selection process. The guidelines do, however, appear directed towards obtaining a grand jury that reflects a fair cross-section of the community.

#### SCRUTINY AND CRITICISM OF THE SELECTION PROCESS

In the criminal context, there is a well-established means of scrutinizing the process of selecting a grand jury: A defendant may seek to quash an indictment based on improprieties in the selection process. How effective this approach is in preventing future improprieties may depend on the nature of the challenge to the selection process. Intentional discrimination in selecting a grand jury may be more effectively deterred than failure to select from a fair cross-section of the community, because the former is grounds for automatic reversal while the latter is not. For example, in *Vasquez v. Hillery*, 474 U.S. at 258, the defendant successfully sought reversal of a murder conviction on the ground that "no black

had ever served on the grand jury in Kings County and that qualified blacks in the county were available to serve ....” In contrast, in *People v. Corona*, 211 Cal. App. 3d at 534, 536-37, the court of appeal invoked the harmless error rule, declining to address the merits of the defendant’s claim that the grand jury did not represent a fair cross-section of Sutter County due to underrepresentation of Mexican-Americans.

In the context of a civil grand jury, the staff is not certain what, if any, mechanism exists for challenging the selection process. There has, however, been recent criticism of the process, at least in Santa Clara County, where a civil grand jury was recently dissolved amid allegations that “the judge-appointed group does not reflect the county’s demographics and needs to be more diverse.” Henneman, *Two Quit Civil Grand Jury, Cite Friction*, San Francisco Chronicle (Nov. 26, 1998). Dissident jurors alleged that “the investigatory body was rife with favoritism, discrimination, racism and exclusion. Gonzalez, *Santa Clara Judge Suspends Grand Jury Panel*, Sacramento Bee (Dec. 23, 1998). The dissident jurors planned to encourage other persons to apply as grand jurors, “in hopes of increasing the diversity of future grand juries.” T. Henneman, *Santa Clara Grand Jury is Dissolved*, San Francisco Chronicle (Dec. 31, 1998).

#### PENAL CODE SECTION 899

Penal Code Section 899 provides:

899. The names for the grand jury list shall be selected from the different wards, judicial districts, or supervisorial districts of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the lists. The grand jury list shall be kept separate and distinct from the trial jury list. In a county of the first class, the names for such list may be selected from the county at large.

Earlier this spring, Judicial Council staff informed us that at least one county (1) used municipal court districts in selecting its grand jury before unification, and (2) wants to continue that practice post-unification. Judicial Council staff inquired whether that practice is still permissible, and whether Section 899 should be amended to clarify this point. (First Supplement to Memorandum 99-22, pp. 2-4.) The Commission decided not to address this issue on an urgency

basis in its trial court unification clean-up bill (SB 210), but to follow its usual process instead. (Minutes, April 8, 1999, p. 9.)

In the context of a county with a unified superior court, the proper interpretation of “judicial districts” in Penal Code Section 899 is debatable. Under Code of Civil Procedure Section 38, which provides rules of construction for statutory references to “judicial districts”, the reference to “judicial district” in Penal Code Section 899 most likely would be interpreted to mean the entire county in a county with a unified superior court. So interpreted, it would make little sense to select a grand jury on the basis of “judicial districts” in a county with a unified superior court.

The rules of construction in Code of Civil Procedure Section 38 are, however, qualified by the phrase “[u]nless the provision or context otherwise requires.” It is possible to conclude that in the context of a unified superior court, Penal Code Section 899’s reference to “judicial districts” means “former judicial districts.” The staff does not agree with this construction, but it is not out of the question.

Consideration of these points led the staff to consider a second set of issues relating to Penal Code Section 899: What is a “ward” within the meaning of the provision? Is the reference to “wards” obsolete?

Julian Davis, a student legal assistant for the Commission, has explored these issues in depth, and determined that the reference to “wards” is confusing, obsolete, and of no practical importance in current court practices. (Exhibit pp. 3-26.) He recommends that the term be deleted from the statute.

Importantly, however, Mr. Davis also discovered some cases interpreting the predecessor of Penal Code Section 899 (former Code of Civil Procedure Section 206), which was almost identically worded. Those cases suggest that use of the political subdivisions enumerated in Section 899 (“wards, judicial districts, or supervisorial districts”) in selecting a grand jury is permissive, rather than mandatory. See *People v. Croson*, 87 Cal. App. 5, 261 P. 531 (1927); *People v. Danford*, 14 Cal. App. 442, 112 P. 474 (1910); see also Exhibit pp. 11-12.

This case law raises further issues relating to Section 899. If the provision is permissive, its plain language is misleading, because it says that the “names for the grand jury list *shall* be selected from the different wards, judicial districts, or supervisorial districts of the respective counties ....” (Emphasis added.) That suggests the possibility of revising the provision to make explicit that in selecting a grand jury, a court may, but does not have to, use the enumerated political



subdivisions. Such an approach may help alleviate concerns about using former judicial districts.

The staff is leery of revising the provision in this manner, however, because such a proposal almost certainly will embroil us in questions about whether Section 899 and the other provisions on selection of a grand jury are sufficient to ensure compliance with the constitutional requirements governing the process. Indeed, even more minor tinkering, such as deleting the reference to “wards” or explicitly addressing the use of former municipal court districts in a county with a unified superior court, is likely to lead to questions about the meaning of the provision, how it is intended to operate, and whether it conforms to the constitutional requirements.

For instance, the provision expressly authorizes selection of potential grand jurors from “the county at large” in a county of the first class (i.e., Los Angeles County). By negative implication, use of that procedure may be impermissible in other counties. Yet random selection of potential grand jurors from the county at large, followed by examination for the limited purpose of determining whether they are qualified to serve, may be best means of ensuring that the grand jury represents a fair cross-section of the community. If potential grand jurors are selected from political subdivisions of the county, instead of from the county at large, then those political subdivisions would need to be approximately equal in population to achieve a fair cross-section. Use of former municipal court districts may not meet this criterion, especially as demographics change over time. Attempting to clarify that use of former municipal court districts is permissible may prompt criticism along these lines. But attempting to clarify that use of former municipal court districts is *not* permissible is also likely to generate debate about achieving a fair cross-section. Counties currently using that procedure are likely to contend that it is perfectly adequate and should continue to be permitted. Explicitly requiring that former municipal court districts be approximately equal in population would simply highlight the issue.

Moreover, Section 899 does not appear to require random selection of potential grand jurors. Indeed, Sections 901 and 903.4 expressly authorize judges to hand-pick grand jurors. Proposing technical corrections in Section 899 might be viewed as an attempt to demonstrate modern legislative support for that approach. Again, this may engender controversy over compliance with the constitutional constraints on selection of a grand jury.

In sum, the staff is very dubious that we could revise the list of political subdivisions in Section 899 without getting enmeshed in debate over whether the list is mandatory or merely permissive, and whether the procedure set forth in the provision is constitutional. While such reassessment of the statutorily prescribed selection process may be appropriate, it is far afield of the Commission's authority to implement trial court unification. We hesitate to delve into this area without express authority from the Legislature. **The staff therefore cautions against proposing any revision of Penal Code Section 899 pursuant to the Commission's authority to implement trial court unification.**

#### PENAL CODE SECTIONS 908 AND 908.1

Penal Code Section 908 specifies a procedure for remedying a shortage in the number of grand jurors who report for service. Penal Code Section 908.1 specifies a procedure for filling a vacancy arising after a grand jury has been impaneled. In the course of research on trial court unification, Professor Kelso and one of his students noticed that both of these provisions contain what appears to be an obsolete cross-reference to former Code of Civil Procedure Section 226. (Exhibit pp. 27-29.) Professor Kelso suggests fixing those cross-references as follows:

**Penal Code Section 908 (amended). Obtaining number of grand jurors required**

908. If the required number of persons summoned as grand jurors are present and not excused, such required number shall constitute the grand jury. If more than the required number of such persons are present, the clerk shall write their names on separate ballots, which he shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of such persons are present, the panel may be filled ~~as provided in Section 226 of the Code of Civil Procedure~~ by the presiding judge, who shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors. If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

**Comment.** The cross-reference to Section 226 of the Code of Civil Procedure is obsolete. The amendment adopts the same

process for selecting grand jurors as for additional grand juries. See Penal Code §§ 904.4 & 904.6.

**Penal Code Section 908.1 (amended). Filling of vacancy**

908.1. When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the clerk of the superior court, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, or from a special venire as provided in Section 226 of the Code of Civil Procedure by the presiding judge, who shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors. No person selected as a grand juror to fill a vacancy pursuant to this section shall vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of his selection.

**Comment.** The cross-reference to Section 226 of the Code of Civil Procedure is obsolete. The amendment adopts the same process for selecting grand jurors as for additional grand juries. See Penal Code §§ 904.4 & 904.6.

(Exhibit pp. 28-29.)

Essentially, Professor Kelso would use the same procedure in these provisions as for selecting an additional grand jury: The presiding judge selects names at random from the list of trial jurors, then examines those selected to determine if they are qualified to serve. This approach seems reasonable, but the proposed revision would amount to more than a simple technical correction of a cross-reference. Like the various suggested revisions of Penal Code Section 899, it is likely to trigger consideration of the merits of different procedures for selecting grand jurors. In fact, it seems impossible for the Commission to propose a new approach for Sections 908 and 908.1 without prompting consideration of whether another approach might be better.

Again, the staff is reluctant to undertake such a reform without legislative authority to study the area, particularly because the connection to trial court unification is even more remote here than with respect to Penal Code Section 899. The obsolete cross-references to former Code of Civil Procedure Section 226 arose due to the 1988 repeal of that provision. They have nothing to do with trial court unification, except that the problem was discovered in the course of research on

**trial court unification. Because the Commission lacks authority to study grand jury selection, we recommend leaving Penal Code Sections 908 and 908.1 alone, for the time being.**

#### STUDY OF GRAND JURY SELECTION

Although the staff believes it would be inappropriate for the Commission to propose amendments of Penal Code Sections 899, 908, or 908.1 at this time, we are convinced that reform of the statutes governing grand jury selection is needed. The ambiguities in Section 899 and obsolete cross-references in Sections 908 and 908.1 are only part of the problem. For instance, Section 888 refers to several provisions that have been repealed (former Sections 904.5, 904.7-904.9). Similarly, Section 903 refers to a “county in which the secretary of the judges of the superior court performs the duties of jury commissioner pursuant to Section 69893 of the Government Code.” Professor Kelso reports that this situation no longer occurs and should no longer be recognized in the statutes.

More significantly, Professor Kelso also reports that every county now has a jury commissioner or a court executive officer performing the duties of jury commissioner. It might no longer be necessary to have a standard statutory procedure for grand jury selection (Sections 895-901) followed by a special procedure for counties in which a jury commissioner is appointed (Sections 903-903.4). The staff also questions the need for a special provision (Section 904.4) on appointment of an additional grand jury in “any county having a population of more than 370,000 but less than 400,000 as established by Section 28020 of the Government Code ....”

Most importantly, the statutory scheme affords judges considerable discretion in selecting a grand jury. (See, e.g., Sections 901, 903.4.) The provision evincing the greatest degree of concern for achieving ethnic and geographic balance is Section 904.6, which pertains to selection of an additional grand jury and states in part:

It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned for that purpose. All persons selected for the additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county.

It may be advisable to incorporate similar language in other provisions governing selection of a grand jury, and to extend such principles to selection of a grand jury that holds civil sessions.

Whether such reforms are in order, however, is not a matter that the Commission is currently authorized to study. At this point, the staff is not sure whether the Commission is the best entity to undertake this type of study. **We recommend that the Commission either (1) refer the issues identified in this memorandum to an appropriate entity for consideration, or (2) consider this matter in connection with its annual review of topics and priorities.**

Respectfully submitted,

Barbara S. Gaal  
Staff Counsel

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Exhibit

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**SAN LUIS OBISPO COUNTY SUPERIOR COURT**  
**RULE 16.08 SELECTION OF GRAND JURORS**

Annually, upon request by the presiding judge of the San Luis Obispo Superior and Municipal Courts, the Jury Commissioner shall furnish the judges of the court a list of qualified prospective grand jurors. Sections 903, 903.1, 903.2, 903.3, and 903.4 of the California Penal Code.

(a) Qualification of Jurors. The Jury Commissioner shall inquire and be informed of the qualifications of persons who will be summoned before the court for grand jury service. Section 903.1 PC.(1) The Jury Commissioner shall be satisfied that a person is qualified to serve as a grand juror before he or she is sworn. Section 909 PC.

(b) Submission of List and Names Not on List. The Jury Commissioner shall submit a list of recommended prospective grand jurors to the court for examination and selection by the judges of the court. Section 903.3 PC.

(1) The judges are not required to select any names from the list returned by the Jury Commissioner but may, instead, select from among the body of persons in the county suitable and competent to serve as grand jurors. Section 903.4 PC.

(i) Nominations by the judges will be submitted to the presiding judge on or before June 1.

(2) The judges of the court shall meet during June of each year and, by majority vote therefor, select the members of the panel from which the grand jurors to serve during the ensuing fiscal year shall be selected. The court will then submit a copy of the names to the Jury Commissioner and the Clerk for publication. Sections 899 and 900 PC.

(c) Annual Drawing, Number of Jurors, Length of Service. One grand jury shall be drawn and impaneled each year. The grand jury shall consist of not less than 25 nor more than 30 persons. Sections 904 and 905 PC.

(1) Each year an order shall be made and filed with the Clerk of the Court directing a grand jury to be drawn, and the time at which the drawing will take place. The grand jury may be selected to serve from either a fiscal year or calendar year term. Sections 904, 905 PC.

(2) The San Luis Obispo County Grand Jury will serve from July 1 to June 30 of each fiscal year and be comprised of 19 persons and 11 alternates. Section 906 and 908 PC.

(i) If more or less persons necessary appear for the selection process, the court may apply section 908 of the Penal Code.

(d) Grand Juror Fees and Expenses. Fees for grand jurors are \$10 per day and 20 cents per mile driven while attending to the business of the grand jury.

(e) Selection of Foreperson. The judges of the Superior Court shall, upon impanelment of the grand jury, select one of the grand jurors as foreperson by majority vote. If for any reason the foreperson is unable to continue service as such a replacement, the foreperson shall be selected from the remaining grand jurors by majority vote of the court promptly after the vacancy becomes known.

(f) Removal of Foreperson. The judges of the Superior Court may, by majority vote of all the judges attending a meeting called for that purpose, discharge the foreperson of the grand jury. Upon such vote being recorded, there is a vacancy in the office of foreperson of the grand jury which shall be filled by appointment of a new foreperson pursuant to the provisions of Penal Code Section 912.

(g) Additional Grand Jury Impanelment. Upon request of the presiding judge the Jury Commissioner shall furnish a list of qualified prospective grand jurors to form special grand juries. PC 904.6.

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August 4, 1999

To: California Law Revision Commission

From: Julian Davis

Re: Use of Wards in Penal Code §899

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## **Introduction**

Penal Code Section 899<sup>1</sup> governs the preparation of a county's list of potential grand jurors. It provides:

899. The names for the grand jury list shall be selected from the different *wards, judicial districts, or supervisorial districts* of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the lists. The grand jury list shall be kept separate and distinct from the trial jury list. In a county of the first class, the names for such list may be selected from the county at large.

(Emphasis added.) As a result of trial court unification, the Judicial Council received an inquiry regarding the propriety of continuing to use judicial districts in selecting grand jurors. (First Supplement to Memorandum 99-22, pp. 2-4.) In considering that issue, we came across a second set of issues: What is a "ward" within the meaning of Section 899? Is the reference to "wards" in Section 899 obsolete? This study was conducted to determine whether the word "ward" should be deleted from the statute.

## **Brief Answer**

Unfortunately, the term "ward" has not been defined in the California codes. California cases referring to a "ward" provide little guidance as to the meaning of the word. It is not readily apparent from the context of Section 899 whether it is a general

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.



term or a specific term that refers to a specific type of municipal government structure or system.

The overwhelming majority of cities contacted in this study use the term “municipal district” to refer to the area from which a member of the City Council is elected. Only Bakersfield and San Bernardino use the term “ward” for that purpose.<sup>2</sup> These two cities use “municipal ward” and “municipal district” interchangeably. The California Supreme Court has also used the terms interchangeably.<sup>3</sup>

The effect of deleting the term “ward” from Section 899 may be minimal. Currently no county in California selects its grand jurors according to the boundaries of a “municipal ward” or “municipal district”. Most counties select grand jurors according to supervisorial districts or use some form of at large process, combined with recommendations, volunteers, or lottery selection from DMV or voter registration lists.<sup>4</sup> Penal Code Section 899 and its predecessor (former Code of Civil Procedure Section 206) have been understood to permit such practices, provided that they do not systematically exclude or substantially under-represent members of any identifiable group in the community.

At one time “ward” was a significant term in California municipal government vernacular. Today, the reference to “wards” in Penal Code Section 899 is confusing. The few statutes refer to or define “ward” as a political subdivision of a city. The term “ward”

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<sup>2</sup> See Chart 2 in Appendix.

<sup>3</sup> See *Blotter v. Farrel*, 42 Cal. 2d 804, 270 P.2d 481 (1954). In resolving a dispute as to whether voters could compel the municipal council to redistrict Palm Springs, the court relied on Government Code Sections 34871, 34876, 35322, and 35323. Sections 34871 and 34876 referred to “municipal districts”, while 35322 and 35323 referred to “municipal wards”. Both were applied to Palm Springs, which was divided into districts.

<sup>4</sup> See Chart 1 in Appendix.

is used in five other ways in the California Codes, none of which makes sense in the context of Section 899.<sup>5</sup> Most of the cities contacted did not know what “ward” meant. To continue to use the term in the context of grand jury selection seems outdated and unnecessary. It is recommended that the term be deleted from Section 899 and the statute perhaps also be revised to reflect its current construction and implementation.

### **Methodology**

In conducting this research, it was necessary to track the historical use of the term “ward” in the California codes. Specifically, use of the term was traced back to sections of the California Government Code defining obligations and powers of municipal corporations. Additional background was sought concerning the development of California municipal government. The California League of Cities provided a list of cities divided into wards or districts. Cities on that list were contacted and questioned as to whether their districts were referred to as wards. Finally, each superior court was contacted about its grand jury selection process to determine if any county has taken advantage of the statute allowing the superior court of each county to use wards in selecting grand jurors. The results of this research follow.

### **Historical Context of Municipal Wards**

The term “ward” first appears in the former California General Laws in 1850. That statute read as follows:

The Common Council shall have power to divide the city into a convenient number of wards, and fix the boundaries thereto, and may change the same from time to time, as they shall see fit, having regard to the number of white male inhabitants, so that each ward shall contain, as near as may be,

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<sup>5</sup> See Chart 3 in Appendix.

the same number of such inhabitants. The number of wards of any city shall not exceed the number of councilmen to which the city is entitled, and when a city shall have been so divided, the councilmen shall be elected from the several wards respectively, according to the number of inhabitants.<sup>6</sup>

Under California's first Constitution the state legislature provided for the incorporation of cities. Cities were restricted in their powers to tax, assess, borrow money, contract debts, and loan on credit in order to prevent local corruption or abuses by government.<sup>7</sup> The early legislature forced municipal corporations to be formed by special acts of the state legislature or by approval of the county. This system began to cause political problems as citizens grew more frustrated with inefficient state control of local affairs.

The first California cities had as few as seven to as many as twenty members on the municipal council.<sup>8</sup> Their councilmen were elected from subdivisions of the city known as wards.

In 1872 the Political Code was developed. Former Political Code Section 4404 gave the council of the city the power to "divide the city into a convenient number of wards, fix the boundaries thereto, and ... change the same from time to time as they see fit."<sup>9</sup> This change in the allocation of power from the state legislature to the city council was one of the first steps toward more efficient and locally controlled municipal government. Unfortunately, the state government still maintained a great influence in the area of taxation. The inefficiency of this system of local government was an impetus to the adoption of the Constitution of 1879.

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<sup>6</sup> "An Act of March 11, 1850, for the incorporation of cities", Article 246, sec. 9.

<sup>7</sup> Bollens, John C. and McKinley, John R., Bureau of Public Administration, California City Government (1948), p. 10.

<sup>8</sup> *Id.*, p. 11.

In 1879, most municipal corporations in California could be formed under the general laws. The new Constitution permitted home rule in the cities. Cities of over one hundred thousand persons could frame their own charters, which were known as freeholders' charters. In 1883, former Political Code Section 4404 was replaced with a new statute that classified California cities into six classes on the basis of population.<sup>10</sup> Each class was allowed a different maximum number of wards and councilmen to represent each ward. Cities existing prior to the Act were allowed to continue their municipal government either under a special act of the legislature or by reincorporating under the general law.<sup>11</sup> Under the General Laws, a city with a population of over one hundred thousand could have a maximum of twelve wards and twelve aldermen. The division of the cities into classes was accompanied by an increase in powers and responsibilities for city officials.

California's early municipal development could be characterized as a search for a form of government which would safeguard against local corruption and vigilantism, as experienced in the mining camp towns, as well as to provide protection against an intrusive state apparatus. One of the early complaints under the first Constitution was that state legislatures and their political parties would appoint party friends to local government positions. Californians were unhappy with this breed of political patriotism.

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<sup>9</sup> Former Political Code § 4404.

<sup>10</sup> 1883 Cal. Stat. Ch. 49, §1.

<sup>11</sup> Bollens, *supra* note 7, at 14.

## Rise of the City Manager Form of Government

The California Constitution was amended in 1914 to allow charter cities to have exclusive authority to legislate on municipal matters. It was at this point that the commission and city manager forms of government were proposed nation-wide. The city manager form of government is “a municipal reform doctrine” developed by Richard Childs and sponsored by the National Municipal League since 1915.<sup>12</sup> Childs’s plan was introduced to make government more responsible by “reducing the number of elected officials.”<sup>13</sup> As a result, city councils under the city manager plan are composed of “five, seven or nine members, elected at large or by districts.”<sup>14</sup> A clue as to why Childs chose to refer to a municipal council district under the manager plan as a “district” as opposed to a “ward” can be found in a statement by Leonard White, a city manager and early proponent of the city manager form of government:

Governmental problems have become intricate and even more insistent. They call for solution with the aid of science, not the wisdom of a *ward* politician. What the whole world is witnessing is the emergence of government by experts.<sup>15</sup>

(Emphasis added.) This new form of government became so popular in California that the state “led all others in the number of people who live in council-manager cities” by 1949.<sup>16</sup> Because the council-manager system reduces the number of

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<sup>12</sup> Richard J Stillman, *The Rise of the City Manager*, p. 3 (1974).

<sup>13</sup> International City Manager’s Association, *The Municipal Yearbook*, p. 249 (vol. 17, 1950).

<sup>14</sup> Stillman, *supra* note 12.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Bollens, *supra* note 7, at 17.

council members and centralizes the administrative functions in one person, the result was a “reduction in the number of elective officers.”<sup>17</sup>

The popularity of the council-manager and the commission form of government resulted in the repeal of much of the Municipal Corporations Act of 1883.<sup>18</sup> The 1949 legislation repealing the 1883 provisions contained rules for fifth and sixth class cities only.<sup>19</sup> There were provisions to adopt either a commission or council-manager form of government. The reason for this sudden shift is that by 1949 all the cities that were operating under the Municipal Corporations Act were sixth class cities with the exception of two fifth class cities.<sup>20</sup> These cities were composed, for the most part, of council-manager governments. All other California cities were operating either under a charter pursuant to the Constitution of 1879, a special charter or special legislation. It is at this point in California’s history that its Municipal Corporations statutes cease to refer to council districts as wards.

Cities incorporating under the general laws either follow a council-manager, mayor-council, or commission form of government. However, the influence of the city-manager plan can be felt in each form of municipal government. The council-manager plan suggests smaller ballots and fewer districts. This portion of the council manager plan has been adopted and applied in all cases under the General Laws of California. Cities incorporating under the General Laws will either have

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<sup>17</sup> *Id.*

<sup>18</sup> See 1949 Cal. Stat. Ch. 79 (repealing 1883 Cal. Stat. Ch. 49).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 35.

five, seven, or nine council members or five commissioners. It can now be said with some degree of certainty that the council-manager's aversion to "ward politicians" has manifested in a change in terminology in the California statutes. Considering the dearth of information on legislative intent of the statutory revisions, this seems the most likely interpretation.

### **The Grand Jury**

California Penal Code Section 899 was preceded by former Code of Civil Procedure Section 206 (hereafter "Section 206"). Section 206 was added as part of the 1872 Act to establish a Code of Civil Procedure. Section 206 originally stipulated that the list of grand jurors contain "not less than one for every hundred inhabitants in each township or ward" in such a way that the total number of jurors not exceed one thousand nor be less than one hundred. Jurors were originally to be selected from wards because the population of California was concentrated in townships or cities. The city was a basic subdivision of the county and so it seemed mere common sense. The dominance of the city waned during the first half of the twentieth century as suburbs began to grow. The statute was amended to allow selection of grand jurors according to "wards or judicial districts" in 1951. Supervisorial districts were added in 1980.

Grand jurors have always been allowed to be selected according to wards. However, the continuance of this term in the statute appears to be an outdated relic. I conducted an informal telephone survey of each grand jury system in the state. All but one county responded to the survey. Of the 57 counties included in the study, none use wards as a method of grand jury selection. Coupled with the

information that only two cities currently refer to a council district as a ward, it is difficult to fathom a reason for continuing to use this term.

Also, Section 899's instruction to select grand jurors from the "different wards, judicial districts, or supervisorial districts" does not appear to be mandatory. In *People v. Danford* <sup>21</sup> the court refused to invalidate a conviction based on the argument that the grand jury that indicted the defendant did not contain a person from the township of Catalina. Former Code of Civil Procedure Section 206 stated that the lists of jurors "shall be selected from the different wards or townships." In dismissing the argument, the court said "the provision of the section in this regard is directory", and in absence of "abuse of discretion" the selections by the judges in that county should not be disturbed.<sup>22</sup>

The court's reasoning in *People v. Croson*<sup>23</sup> was even more surprising. In *Croson* the court found that the jury commissioner "made no substantial effort" to follow the directives of Section 206. The jury commissioner's method of selection bore "no discoverable relation" to the method stated in Section 206.<sup>24</sup> Yet the court found that the provisions of Section 206 are "directory" only.<sup>25</sup> Further, the court held that Section 206 is "intended merely for the guidance of the person making the list".<sup>26</sup>

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<sup>21</sup> 14 Cal. App. 442, 112 P. 474.

<sup>22</sup> *Id.* at 448-449.

<sup>23</sup> 87 Cal. App. 5, 261 P. 531.

<sup>24</sup> *Id.* at 11.

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 11.



Former Code of Civil Procedure Section 206 was moved to the Penal Code in 1959.<sup>27</sup> The language of former Code of Civil Procedure Section 206 was kept, with the addition of “or judicial districts” following “wards”. As a result of the interpretations given to former Code of Civil Procedure section 206, Penal Code Section 899 has been understood to likewise be directory only.

No superior court contacted during this study selects grand jurors on the basis of municipal wards or districts. In fact, very few counties follow the explicit dictates of Section 899. It can be concluded that removing the term “wards” from the statute would make no substantive difference in the law concerning grand jury selection processes. Further, removing “wards” from the statute would have no impact on any current grand jury selection process.

## **Conclusion**

The history of municipal wards in California can be traced to that state’s first experimentation with municipal governance. Like many cities at that time, California cities were split into many districts with many locally elected politicians representing a smaller constituent base and strongly influenced by political party bosses. California municipal governance was strongly influenced by experience of inefficient government and progressive era city reform movements. The rise of the commission and city manager forms of government in the United States particularly took hold in California such that, with the exception of charter city governments, all cities operating under the general laws fell into one

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<sup>27</sup> See 1959 Cal. Stat. ch. 51, §2.

of those two categories by 1949. It is at this point where “municipal wards” became “municipal districts”.

Currently there is little difference in usage between the two terms. Though they follow from a different history, a “municipal district” and “municipal ward” both are understood as a subdivision of a city from which a city council member is elected. “District” is the term most widely understood and applicable in California due to the influence of the progressive era reforms, so it is recommended that where either term could be used, “districts” should be used.

In the context of Penal Code Section 899, the reference to “wards” could be deleted altogether and no reference need be made to a municipal district of any kind. As was previously mentioned, no system for grand jury selection utilizes a municipal district or township. It is with this understanding that the following options are suggested for the Commission to consider.

**Option 1: Deleting “wards” from Penal Code Section 899**

A first option would be to simply delete the reference to “wards” from Section 899:

The names for the grand jury list shall be selected from the different ~~wards~~, judicial districts, or supervisorial districts of the respective counties in proportion to the inhabitants therein, as nearly as the same can be estimated by the persons making the lists. The grand jury list shall be kept separate and distinct from the trial jury list. In a county of the first class, the names for such list may be selected from the county at large.

This proposal merely removes wards from the statute but maintains the same basic structure of former Code of Civil Procedure Section 206. This reform is likely to cause little or no controversy.

**Option 2: Deleting “wards” from Section 899 and revising the statute to better reflect the underlying intent.**

A second option would be to delete the reference to “wards” from Penal Code Section 899, as well as revise the provision to clarify the underlying intent. Cases such as *People v. Croson* and *People v. Danford* suggest that use of the statutorily enumerated political subdivisions (“wards, judicial districts, or supervisorial districts”) is not mandatory. But the statute does appear to be directed towards ensuring that the grand jury be a cross-section of the county. Revising the statute to more clearly reflect this intent may be useful, but may also be more challenging to accomplish, both as a matter of drafting and as a matter of achieving consensus.

## Appendix

**Chart 1: Grand Jury Process by County**

(The following chart was provided through the California League of Cities. Information on the selection of council persons by districts or wards was gathered in phone interviews with representatives of each city on the chart. )

<b>COUNTIES</b>	<b>GRAND JURY SELECTION METHOD</b>
Alameda	Supervisory Districts
Alpine	At Large by invitation to all registered voters
Amador	Supervisory Districts
Butte	Judicial Districts (2)
Calaveras	At Large (Random)
Colusa	Supervisory Districts
Contra Costa	Supervisory Districts (advertisements)
Del Norte	Supervisory Districts (townships?), on recommendations
El Dorado	At Large (advertisements)
Fresno	At Large (volunteers)
Glenn	Zip Code (questionnaires)
Humboldt	At Large (advertisements)
Imperial	At Large (random)
Inyo	At Large
Kern	Supervisory Districts
Kings	Judicial Districts

Lake	Supervisory Districts
Lassen	Supervisory Districts
Los Angeles	At Large (applicant selection)
Madera	Judicial Districts
Marin	At Large
Mariposa	At Large (DMV and Voter Registration lists)
Mendocino	At Large (Random)
Merced	At Large
Modoc	Supervisory Districts
Mono	Judicial Districts
Monterey	At Large (advertise, recommendations, volunteers)
Napa	Supervisory Districts
Nevada	At Large
Orange	Supervisory Districts
Placer	At Large
Plumas	Supervisory Districts
Riverside	Supervisory Districts or At Large
Sacramento	At Large
San Benito	At Large (advertise)
San Bernadino	Supervisory Districts

San Diego	Supervisory Districts
San Francisco	Selected from petit jury list
San Joaquin	At Large (nominations, criminal from petit jury list)
San Luis Obispo	Supervisory Districts (if possible)
San Mateo	Supervisory Districts
Santa Barbara	Supervisory Districts
Santa Clara	Supervisory Districts
Santa Cruz	Supervisory Districts
Shasta	At Large (volunteer)
Sierra	At Large
Siskiyou	Supervisory Districts
Solano	Townships or Supervisory Districts
Sonoma	Supervisory Districts (advertise)
Stanislaus	At Large (random, advertise)
Sutter	Supervisory Districts
Tehama	
Trinity	Recommendations from Supervisors
Tulare	At Large (recommendations)
Tuolumne	At Large similar to petit process
Ventura	Supervisory Districts
Yolo	Recommendations from Supervisors

Yuba	Supervisory Districts
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**Chart 2: Cities electing council members by districts/wards**

Cities	Wards or Districts
Bakersfield	Wards
Berkeley	Districts
Dinuba	Districts
Downey	Districts
Fresno	Districts
Inglewood	Districts
Long Beach	Districts
Los Angeles	Districts
Oakland	Districts
Pasadena	Districts
Pomona	Districts
Redondo Beach	Districts
Riverside	Districts
Sacramento	Districts
Salinas	Districts
San Bernardino	Wards
San Diego	Districts

San Jose	Districts
Seal Beach	Districts
Stockton	Districts
Watsonville	Districts



### Chart 3: Use of the term "ward" in the California Codes

(The following chart lists California statutes using the term "ward". It does not include statutes referring to "wards" in the Penal Code, Welfare and Institutions Code, or Probate Code, because these statutory references most likely indicate a dependent minor of a person or the state.)

California Code	Code Sections	Definition of "ward" as used in the Statute
<b>Business and Professions Code</b>		
	1895.2	Dependent child or child subject to the jurisdiction of the court
	4019	Division or wing of a hospital or jail
	4057	Division or wing of a hospital or jail
	4138	Division or wing of a hospital or jail
	24071	Dependent child or child subject to the jurisdiction of the court
<b>Civil Code</b>		
	27360.5	Dependent child or child subject to the jurisdiction of the court
	45345	Dependent child or child subject to the jurisdiction of the court
<b>Code of Civil Procedure</b>		
	229	Dependent child or child subject to the jurisdiction of the court
	372	Dependent child or child subject to the jurisdiction of the court
	374.5	Dependent child or child subject to the jurisdiction of the court
	641	Dependent child or child subject to the jurisdiction of the court
	873.69	Dependent child or child subject to the jurisdiction of the court
<b>Commercial Code</b>		
	46792	Division or wing of a hospital or jail
<b>Corporations Code</b>		
	0	
<b>Education Code</b>		
	5028	Subdivision of a school or community college district
	5029	Subdivision of a school or community college

		district
	5031	Subdivision of a school or community college district
	5228	Subdivision of a school or community college district
	46800	Dependent child or child subject to the jurisdiction of the court
	47605	Dependent child or child subject to the jurisdiction of the court
	47760(a)	Dependent child or child subject to the jurisdiction of the court
	48264.5(d)	Dependent child or child subject to the jurisdiction of the court
	48705	Dependent child or child subject to the jurisdiction of the court
	48730	Dependent child or child subject to the jurisdiction of the court
	48900.1(a)	Dependent child or child subject to the jurisdiction of the court
	49076(a)	Dependent child or child subject to the jurisdiction of the court
	5120105(d)	Dependent child or child subject to the jurisdiction of the court
	52173	Dependent child or child subject to the jurisdiction of the court
	52176	Dependent child or child subject to the jurisdiction of the court
	52531	Division or wing of a hospital or jail
	52852	Dependent child or child subject to the jurisdiction of the court
	56156(b)	Division or wing of a hospital or jail
	56501	Dependent child or child subject to the jurisdiction of the court
	71029	Dependent child or child subject to the jurisdiction of the court
	88245	Dependent child or child subject to the jurisdiction of the court
<b>Evidence Code</b>		
	0	
<b>Family Code</b>		
	7669	Dependent child or child subject to the jurisdiction of the court
	7121(b)	Dependent child or child subject to the jurisdiction of the court
	9005(e)	Dependent child or child subject to the jurisdiction of the court
<b>Financial Code</b>		
	18523	Dependent child or child subject to the jurisdiction of the court
<b>Fish and Game</b>		

<b>Code</b>		
	7151(a)(c)	Dependent child or child subject to the jurisdiction of the court
<b>Food and Agriculture Code</b>		
	0	
<b>Government Code</b>		
	854.3	Division or wing of a hospital or jail
	4560	Dependent child or child subject to the jurisdiction of the court
	7527.5(c)	Dependent child or child subject to the jurisdiction of the court
	7579(a)(b)	Dependent child or child subject to the jurisdiction of the court
	12945	Dependent child or child subject to the jurisdiction of the court
	14672.16 (a)	Dependent child or child subject to the jurisdiction of the court
	19583.5(a)	Dependent child or child subject to the jurisdiction of the court
	19583.51	Dependent child or child subject to the jurisdiction of the court
	20046.5(a) (b)	Division or wing of a hospital or jail
	22754(f)	Dependent child or child subject to the jurisdiction of the court
	23015	Dependent child or child subject to the jurisdiction of the court
	25040	Municipal Government District
	27757(c)	Dependent child or child subject to the jurisdiction of the court
	38772(d)	Dependent child or child subject to the jurisdiction of the court
	68152(g)	Dependent child or child subject to the jurisdiction of the court
<b>Harbors and Navigation Code</b>		
	0	
<b>Health and Safety Code</b>		
	1250	Dependent child or child subject to the jurisdiction of the court
	1250.4	Dependent child or child subject to the jurisdiction of the court
	1502.3(a)	Dependent child or child subject to the jurisdiction of the court
	1567	Dependent child or child subject to the

		jurisdiction of the court
	1567.1	Dependent child or child subject to the jurisdiction of the court
	1567.2	Dependent child or child subject to the jurisdiction of the court
	1567.3	Dependent child or child subject to the jurisdiction of the court
	11977	Dependent child or child subject to the jurisdiction of the court
	11998.1(g)	Dependent child or child subject to the jurisdiction of the court
	121070	Division or wing of a hospital or jail
<b>Insurance Code</b>		
	0	
<b>Labor Code</b>		
	1392	Dependent child or child subject to the jurisdiction of the court
	3364.55	Dependent child or child subject to the jurisdiction of the court
	3364.7	Dependent child or child subject to the jurisdiction of the court
<b>Military Veterans Code</b>		
	1015	Division or wing of a hospital or jail
<b>Public Contract Code</b>		
	20134(c)	Dependent child or child subject to the jurisdiction of the court
	20141	Dependent child or child subject to the jurisdiction of the court
	20150.14	Dependent child or child subject to the jurisdiction of the court
	20168.5	Dependent child or child subject to the jurisdiction of the court
	22041	Dependent child or child subject to the jurisdiction of the court
<b>Public Resources Code</b>		
	4799.10(g)	Dependent child or child subject to the jurisdiction of the court
	4951	Dependent child or child subject to the jurisdiction of the court
	4952	Dependent child or child subject to the jurisdiction of the court
	4953	Dependent child or child subject to the jurisdiction of the court
	4956	Dependent child or child subject to the jurisdiction of the court
	4957	Dependent child or child subject to the

		jurisdiction of the court
4958		Dependent child or child subject to the jurisdiction of the court
5506.4(b)		Subdistrict of a resource or utility district
5515		Subdistrict of a resource or utility district
5516		Subdistrict of a resource or utility district
5517.4		Subdistrict of a resource or utility district
5521		Subdistrict of a resource or utility district
5522		Subdistrict of a resource or utility district
5527		Subdistrict of a resource or utility district
5529		Subdistrict of a resource or utility district
5531		Subdistrict of a resource or utility district
5533		Subdistrict of a resource or utility district
5533.5		Subdistrict of a resource or utility district
5534		Subdistrict of a resource or utility district
5534.5		Subdistrict of a resource or utility district
5539(c)		Subdistrict of a resource or utility district
<b>Public Utilities Code</b>		
	11642	Subdistrict of a resource or utility district
	11643	Subdistrict of a resource or utility district
	11644	Subdistrict of a resource or utility district
	11646	Subdistrict of a resource or utility district
	11647	Subdistrict of a resource or utility district
	11653	Subdistrict of a resource or utility district
	11654	Subdistrict of a resource or utility district
	11801	Subdistrict of a resource or utility district
	11823	Subdistrict of a resource or utility district
	11824	Subdistrict of a resource or utility district
	11825	Subdistrict of a resource or utility district
	11828	Subdistrict of a resource or utility district
	11829	Subdistrict of a resource or utility district
	11850	Subdistrict of a resource or utility district
	11851	Subdistrict of a resource or utility district
	11857.1	Subdistrict of a resource or utility district
	11909	Subdistrict of a resource or utility district
	11929	Subdistrict of a resource or utility district
	12752	Subdistrict of a resource or utility district
	12753	Subdistrict of a resource or utility district
	13345	Subdistrict of a resource or utility district
	15961.5	Subdistrict of a resource or utility district
	15975	Subdistrict of a resource or utility district
	24642	Subdistrict of a resource or utility district
	24643	Subdistrict of a resource or utility district
	24644	Subdistrict of a resource or utility district
	24646	Subdistrict of a resource or utility district

	24647	Subdistrict of a resource or utility district
	24648	Subdistrict of a resource or utility district
	24653	Subdistrict of a resource or utility district
	24654	Subdistrict of a resource or utility district
	24801	Subdistrict of a resource or utility district
	24823	Subdistrict of a resource or utility district
	24824	Subdistrict of a resource or utility district
	24826	Subdistrict of a resource or utility district
	24827	Subdistrict of a resource or utility district
	24830	Subdistrict of a resource or utility district
	24862	Subdistrict of a resource or utility district
<b>Revenue and Taxation Code</b>		
	62(n)	Dependent child or child subject to the jurisdiction of the court
<b>Streets and Highways Code</b>		
	0	
<b>Unemployment Insurance Code</b>		
	633.1(b)	Dependent child or child subject to the jurisdiction of the court
	634.5(f)	Dependent child or child subject to the jurisdiction of the court
<b>Vehicle Code</b>		
	13202.7	Dependent child or child subject to the jurisdiction of the court
	14607	Dependent child or child subject to the jurisdiction of the court
	17701	Dependent child or child subject to the jurisdiction of the court
	17710	Dependent child or child subject to the jurisdiction of the court
	23140	Dependent child or child subject to the jurisdiction of the court
	23145.5	Dependent child or child subject to the jurisdiction of the court
	23145.6	Dependent child or child subject to the jurisdiction of the court
	23145.8	Dependent child or child subject to the jurisdiction of the court
	23514	Dependent child or child subject to the jurisdiction of the court
	23516	Dependent child or child subject to the jurisdiction of the court
	23517	Dependent child or child subject to the jurisdiction of the court
	27360	Dependent child or child subject to the jurisdiction of the court

Water Code		
	5976	California- Nevada Interstate Compact, Article III, sec. C and Article XXII use ward broadly to refer to a political subdivision of the United States.
	75751	Dependent child or child subject to the jurisdiction of the court
	75852	Dependent child or child subject to the jurisdiction of the court

CORRECTION OF CROSS-REFERENCES IN PENAL CODE §§ 908 & 908.1  
(March 24, 1999)

In 1988, the Legislature enacted the Trial Jury Selection and Management Act as C.C.P. §§ 190-239. In the course of doing research on Proposition 220 implementation, we came across two sections in the Penal Code dealing with grand jury selection (Penal Code §§ 908 & 908.1) which contain cross-references to C.C.P. § 226 as it existed prior to the 1988 legislation. Those cross-references are now incorrect and should be corrected. Sections 908 and 908.1 read as follows:

**Penal Code § 908.**

908. If the required number of the persons summoned as grand jurors are present and not excused, such required number shall constitute the grand jury. If more than the required number of such persons are present, the clerk shall write their names on separate ballots, which he shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of such persons are present, the panel may be filled as provided in Section 226 of the Code of Civil Procedure. If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

**Penal Code § 908.1.**

908.1. When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the clerk of the superior court, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, or from a special venire as provided in Section 226 of the Code of Civil Procedure. No person selected as a grand juror to fill a vacancy pursuant to this section shall vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of his selection.

The pre-1988 version of C.C.P. § 226 provided as follows:



### **C.C.P. § 226 (pre-1988 amendment)**

Whenever jurors are not drawn or summoned to attend any court of record or session thereof, or a sufficient number of jurors fail to appear, such court may order a sufficient number to be forthwith drawn and summoned to attend the court, or it may by an order entered in its minutes, direct the sheriff, or marshal, or an elisor chosen by the court, forthwith to summon so many good and lawful persons to serve as jurors, as may be required, and in either case such jurors must be summoned in the manner provided in the preceding section. In the superior court the persons so summoned must be residents of the county or city and county; in the municipal court, residents of the judicial district, or city and county, in which such court is established, except that, when a session of the municipal court is held in any district of the county wherein a justice court is established, the persons selected as jurors shall be selected in the manner provided for the justice court.

As amended in 1988, C.C.P. § 226 now deals with the procedure for challenging jurors for cause or peremptorily, and there does not appear to be a counterpart to what formerly was Section 226. We suggest amending Penal Code §§ 908 and 908.1 by adopting the same process used in Penal Code §§ 904.4 and 904.6 for impanelling additional grand juries. Pursuant to Sections 904.4 and 904.6, the presiding judge of the court selects persons at random from the list of trial jurors in civil and criminal cases and examines them to determine whether they are competent to serve as grand jurors. We propose that Sections 908 and 908.1 be amended as follows:

### **Penal Code § 908 [amended].**

908. If the required number of the persons summoned as grand jurors are present and not excused, such required number shall constitute the grand jury. If more than the required number of such persons are present, the clerk shall write their names on separate ballots, which he shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of such persons are present, the panel may be filled *by the presiding judge, who shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors.* If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as above provided.

**Comment.** The cross-reference to Section 226 of the Code of Civil Procedure is obsolete. The amendment adopts the same process for selecting grand jurors for additional grand juries. See Penal Code §§ 904.4 & 904.6.

**Penal Code § 908.1 [amended].**

908.1. When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, such vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the clerk of the superior court, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, *or by the presiding judge, who shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors.* No person selected as a grand juror to fill a vacancy pursuant to this section shall vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of his selection.

**Comment.** The cross-reference to Section 226 of the Code of Civil Procedure is obsolete. The amendment adopts the same process for selecting grand jurors for additional grand juries. *See* Penal Code §§ 904.4 & 904.6.

Respectfully submitted,

J. Clark Kelso & Jake Flesher