

Frequently Asked Questions

CGJA, acting through its Legal and Legislative Resources Committee (LLRC), responds to questions from grand jurors, CGJA members and chapters, court personnel, and grand jury legal advisors about grand jury functions and procedures. Authorized individuals may submit questions by going to the Jury Resources tab and clicking on Legal & Legislative Resources. Questions submitted to LLRC must be phrased in a hypothetical manner to avoid the divulging of confidential information.

The following questions are those that have come up frequently in recent years. The information provided in our answers is based solely on LLRC's familiarity with grand jury law and practices in California. These answers are not intended to be legal advice, and should not be relied upon as such. Grand jurors should consult with their authorized legal counsel whenever legal issues arise.

All references are to the California Penal Code (PC) unless otherwise stated.

The questions are divided into these categories:

Grand Jury Procedures and Members

Grand Jury Investigations

Grand Jury Interviews

Grand Jury Reports

Questions Regarding Grand Jury Procedures and Members:

1. **Q.** May a current or former employee of a local governmental agency be on a grand jury?

A. Yes. But a grand juror who has been employed during the prior three years by a local agency that the grand jury is authorized to investigate must report that employment to the presiding judge and the foreperson and recuse from any investigation or report on that agency. (PC §916.2)

2. **Q.** May a grand juror serve consecutive terms on a grand jury?

A. Yes. The presiding judge is allowed to name up to 10 sitting jurors, who so consent, to hold over for "a second year." (PC §901 (b)) This language seems to mean that a juror can serve only two full consecutive years. The code does not explicitly allow for service for longer than that. However, a few courts allow a juror to serve for more than two consecutive years, so CGJA recommends consultation with the court or grand jury's legal advisor on this issue.

3. **Q.** May a sworn-in alternate juror participate in grand jury proceedings, such as sitting in on interviews, before being impaneled?
A. No. Alternates cannot participate in any way in grand jury proceedings. They are not members of the grand jury until impaneled. Allowing an alternate to sit in on an interview would violate the rules of confidentiality that prohibit the disclosure of evidence to non-jurors. (PC §924.1)
4. **Q.** May a grand jury continue to function if its membership falls below the number of jurors that were originally impaneled?
A. Yes, as long as the number of jurors does not fall below that needed for a supermajority vote. In most counties, the supermajority is 12 (of a 19-member jury). However, in Los Angeles county, it is 14 of 23, and in some counties with a population under 20,000, it is 8 of 11.
5. **Q.** Does a grand jury have to follow the prior grand jury's procedures manual?
A. No. Each grand jury must adopt its own rules of procedure. (PC §916) However, rather than draft a new set of rules, it is more practical for a grand jury to initially adopt and follow an existing procedures manual and then make whatever amendments the sitting grand jury deems necessary.
6. **Q.** What is a quorum for a meeting of the full grand jury? Can a grand jury meeting take place with less than a quorum present?
A. A quorum is the number of jurors who must be present at a meeting to conduct business. The Penal Code does not prescribe a quorum for the grand jury, but section 916 requires a supermajority vote of the entire jury (see FAQ #4) to take "public actions" (see FAQ #19), and many grand juries have adopted a rule establishing the number of jurors needed for a supermajority vote as their quorum. The panel may assemble without a supermajority being present, but would be unable to take public actions on behalf of the grand jury.
7. **Q.** Can a grand juror who will be absent from a meeting vote by proxy?
A. No. A proxy gives a person's right to vote to another person. Allowing for proxy voting is not addressed in the Penal Code, but CGJA believes it is not appropriate. The grand jury is a deliberative body, and each member is expected to take part in deliberations. Because the absent juror would not be able to hear and take part in deliberations leading up to the vote, a proxy vote should not be allowed.
8. **Q.** May a grand jury conduct telephonic or videoconference meetings?
A. Yes, conditionally. While a meeting in person is better, there are times when weather or other impediments can prohibit one or more jurors from attending a meeting in person. There is nothing in the Penal Code that would prohibit a grand jury from conducting a meeting electronically or by using a conference phone. Assuming the grand jury's procedures manual permits, meetings may be conducted in this manner. However, the jurors must be able to hear all the other

participants during the meeting and be able to contribute to the discussion.

9. **Q.** May a grand jury use email among its members and still maintain confidentiality?

A. Yes. CGJA believes that by keeping any confidential material in password-protected attachments and not in the body of the email message, adequate protection of confidentiality can be maintained. It is up to each grand jury to decide whether and how to use email and document the practice in its rules (its procedures manual). The assistance of the county's information technology staff may be sought if necessary.

10. **Q.** May sitting grand jurors be involved in political campaign activities?

A. While grand jurors do not lose their rights as citizens to engage in the political process, they should not link their status as grand jurors to any political endorsements or imply that their position has something to do with information they received during confidential grand jury proceedings. Many grand jurors refrain from taking public stances on local political candidates or ballot measures during their term of service to avoid conflicts of interest or potential allegations of bias.

11. **Q.** Under what circumstances must grand jurors recuse themselves from participating in an investigation, report writing, or voting?

A. Grand jurors who have been employed during the prior three years by a local government agency must recuse themselves from the investigation of their employing agency, under Penal Code section 916.2. (See FAQ #1) In addition, the Political Reform Act, which prohibits government officials and employees from having financial conflicts of interest, applies to grand jurors and can require their recusal from all aspects of a grand jury investigation and report. Grand jurors must also recuse themselves in situations involving other types of real or perceived conflicts of interest or bias.

12. **Q.** May a recused grand juror be interviewed as part of the investigation?

A. No. A recusal must be complete. The recused juror cannot discuss the topic with any other juror, be interviewed on the topic, or take part in any aspect of the investigation or the writing or editing of the report. The juror may not vote on any motion related to the investigation or report and should leave the room when the investigation or report is being discussed.

13. **Q.** What happens if a grand jury discovers mid-investigation that one of the jurors has a conflict of interest and should have been recused?

A. The juror with the conflict of interest should be recused from the rest of the investigation and the writing and editing of the report and should not participate in any deliberations or vote on the matter. In addition, the jury should consult with its legal advisor to determine if the investigation is so tainted by the appearance of impropriety that the jury should terminate its investigation and forward its investigative file to the succeeding grand jury, as allowed under Penal Code section 924.4. (See FAQ #16)

14.Q. Can a grand jury vote to remove one or more of its members?

A. No. While the grand jury or foreperson can recommend to the superior court the removal of a juror, only the court can take that action.

15.Q. Can members of a grand jury be excluded from meetings of a committee of which they are not members?

A. There is no authority in the Penal Code for limiting a grand juror's participation based on committee assignment, unless the juror must be recused because of an actual or perceived bias or conflict of interest. Participation is therefore allowed, provided the grand jury has not restricted this right in its procedures manual.

16.Q. What should the grand jury do with its confidential records and documents at the end of its term?

A. The grand jury, on a supermajority vote, may pass to the succeeding grand jury confidential records, information or evidence related to one or more of the jury's civil investigations. (PC §924.4) This is usually done because the jury did not have time to complete an investigation on that topic. While the Penal Code does not mention records retention or destruction, CGJA recommends that those civil investigative files that are not passed forward be sealed and secured for at least one year or forwarded to the grand jury's legal advisor so they can be available for the court to pass forward on its own directive, or for the legal advisor to defend against a possible defamation lawsuit. All other confidential documents, such as meeting minutes, should be shredded at the end of the term. Confidential documents kept electronically should be erased. Public domain documents may be kept in the grand jury's library for the use by succeeding juries. Grand juries should consult with their legal advisors about document management and should consider adding a document management policy to their procedures manuals.

17.Q. Is there a statutory requirement that grand juries keep or store their reports and the responses received in any particular location or for any particular length of time?

A. The grand jury must maintain a copy of each report and all the responses it receives for a minimum of five years. (PC §933) Exactly where the reports and responses must be stored is not specified, but CGJA recommends that hard copies be kept in a place readily accessible to the jury for research purposes. They should also be posted on the grand jury's website. CGJA believes that posting the reports and responses on the website for five years meets the requirement of Penal Code section 933. That section also requires the clerk of the court to forward the reports and responses to the state archivist to be held in perpetuity.

18.Q. When does a grand jury's term end?

A. The term ends when the successor grand jury is impaneled and sworn, unless it has been sooner discharged by the court. (PC §905.5) The superior court can extend the grand jury's term by not discharging it or impaneling a new grand jury.

Questions Regarding Grand Jury Investigations:

19.**Q.** Is a supermajority vote needed before a committee of the grand jury may conduct an interview or request that an entity provide copies of specific records?

A. Yes, unless the entire jury, by a supermajority vote, has already authorized a full investigation. Penal Code section 916 provides that “all public actions” of the grand jury require the concurrence of a supermajority of the panel. CGJA believes that “public action” means any action that would reveal to a member of the public information about a proposed or pending investigation. Conducting an interview or requesting documents would reveal such information and thus requires supermajority authorization. The supermajority can authorize a full investigation, including any interviews or document requests or site visits the committee might decide are needed, or it can limit its authorization to specific interviews or requests and decide later whether to allow a full investigation.

20.**Q.** Is there any required number or type of agencies a grand jury must investigate?

A. Yes. A grand jury must investigate and report on at least one county agency or function. (PC §925) In addition, the jury must “inquire into” the condition and management of the public prisons and local detention facilities in the county, and the willful or corrupt misconduct of any public officer. (PC §919; see FAQ #49 regarding prisons and jails.) CGJA believes the latter obligation arises only when the jury determines that credible evidence of misconduct exists.

21.**Q.** Are there "statutes of limitations" that relate to the work of a civil grand jury?

A. Yes and no. There is an explicit statute of limitations - six years - for bringing an accusation to remove a person from a public office. Beyond that the law does not prohibit the grand jury from investigating events that happened in the past. Most juries focus their watchdog investigations on current or recent events or practices, since the goal of the watchdog function is to improve the operations of local government.

22.**Q.** Is a grand jury required to launch an investigation in connection with every complaint it receives?

A. No. Each grand jury has complete discretion in deciding which, if any, request for investigation or complaint to investigate.

23.**Q.** Is it proper for a grand jury to tell a complainant whether it has chosen to investigate or not investigate the complaint?

A. No. Providing this information would reveal the nature, course, scope, or direction of the grand jury’s investigation and thus would violate confidentiality requirements. (See *Los Angeles Times v Superior Court* (2003) 114 Cal.App.4th 247) However, CGJA believes that a grand jury may adopt a procedural rule that it may notify complainants on a case-by-case basis when the grand jury does not have the jurisdiction to investigate the complaint (for example, if the complaint is aimed at a federal agency or a private individual).

24.Q. Do the laws requiring confidentiality allow jurors to discuss an ongoing investigation with prior grand jurors?

A. No. Each grand jury is a legally separate body and must maintain the confidentiality of its proceedings, deliberations, and votes. The Penal Code provides no exception for talking in confidence to former or succeeding grand jurors. Grand jurors may not be questioned about anything they say during grand jury meetings or proceedings (PC §924.3) and revealing such information is a misdemeanor. (PC §924.1)

25.Q. May a grand jury use a written survey to gather evidence?

A. The Penal Code does not explicitly prohibit the use of written surveys, but they pose confidentiality risks, as the grand jury has no way to prevent the recipient from sharing the survey with others. In addition, investigating a large number of entities can be very time consuming. The grand jury must verify any information gained from the survey if it is to be included in the report because answers to the survey questions are considered "raw evidence" until verified. In addition, such a survey does not constitute an interview or meeting for the purposes of certain Penal Code provisions. Accordingly, the jury must interview the "subject of the investigation" (the person in charge of the activity under investigation) even if that person responded to a survey. (See PC §933.05(e)) Grand juries should consult their legal advisors before conducting a survey.

26.Q. How does a grand jury verify the information it gathers during an investigation?

A. CGJA recommends that the grand jury make sure that each statement in its report is supported by as many sources as needed to confirm that the statement is factual. The sources can be any combination of interviews, research, or observations. However, highly reliable federal or state (not local) government data or published reports, as long as they are confirmed as being current, may not need to be verified. For example, the grand jury would not need to verify official federal census information, but should confirm that the census report is current.

27.Q. Can a local governmental agency refuse to produce records requested by a grand jury?

A. Although the grand jury is allowed "free access ... to the examination of all public records within the county" (PC §921), there are exceptions to that access, particularly where public policy reasons for the confidentiality requirements of certain records (such as medical or psychiatric records, or attorney/client privileged communications) outweigh the policy reasons that support the grand jury's investigative function.

28.Q. Can a grand jury use the evidence gathered by its predecessor in its investigation and report?

A. While the current grand jury is allowed to review any civil investigation files and records a previous grand jury passed forward to it pursuant to Penal Code section 924.4, the current jury can only include in its report the information that it

verifies through its own investigation. (PC §939.9)

29.Q. Can a grand jury investigate a complaint regarding a criminal matter either before or during the trial, or while an appeal is pending?

A. The grand jury does have this power, but CGJA recommends that the jury consult with the district attorney or county counsel before starting the investigation. The grand jury must take care to avoid interfering with a criminal prosecution or the appearance that it is investigating the court (which is a state agency, outside the grand jury's jurisdiction).

30.Q. What should a grand jury do if it has a reasonable basis to believe its investigation has uncovered criminal activity?

A. CGJA recommends that the grand jury immediately contact the district attorney for assistance in determining how to proceed. No report should be issued until after the matter is discussed with the grand jury's legal advisor.

31.Q. Must the grand jury investigate the prisons and jails within the county?

A. No. The grand jury is required to "inquire" into the condition or management of any "public prison" within the county but is not required to conduct a full investigation. An inquiry is a preliminary review, whereas an investigation is a full and thorough examination. The facilities subject to inquiry are state prisons within the county and local detention facilities that hold adults over 24 hours, such as county or city jails. (PC §919,105 Ops.Cal.Atty.Gen. 15). See FAQ #49 about reporting on detention facilities.

32.Q. Can a grand jury investigate and report on a topic that is the subject of a pending civil lawsuit?

A. Yes, but CGJA recommends that the grand jury consult with its legal advisor before starting the investigation. The Penal Code does not prohibit a grand jury from investigating a matter that is being litigated. However, the jury might want to refrain from doing so in order to avoid confusing witnesses, interfering with the attorney/client relationship, or appearing that the jury is "taking sides" in the dispute. If the jury writes a report, it should avoid any comment about the conduct of the court proceedings because the courts and judges are state agencies and officials outside the scope of the grand jury's jurisdiction.

33.Q. May a grand jury investigate and comment upon a local entity's policy determinations?

A. No. The grand jury's jurisdiction is limited to the review of an entity's operations and procedures. It may not comment upon the merit, wisdom, or expediency of the entity's policy determinations, which the governing board of the entity was elected to make. While it is often difficult to distinguish policy determinations from operations, the easiest way to look at it is that policy determinations are what the entity does (its "big picture" decisions), while operations are how it carries them out on a day-to-day basis. We refer grand juries to their legal advisors for help in understanding this jurisdictional limitation.

34.Q. Is a grand jury permitted to investigate charter schools?

A. Yes, with an exception. Nearly all charter schools are chartered by a school district or county board of education and are subject to the grand jury's jurisdiction. They may be investigated on the same subjects as non-charter schools, such as administration, financial matters, and compliance with its adopted procedures, but not curriculum, policy choices, or personnel decisions. However, a few charter schools are chartered by the State Board of Education and are not under the grand jury's jurisdiction.

35.Q. May a grand jury investigate a nonprofit corporation?

A. Yes, but only if the nonprofit corporation was created by or is operating on behalf of a public entity (PC §933.6) and provides a routine public service. These types of nonprofit corporations are rare. If a local governmental agency is providing funding to a nonprofit corporation neither established by it, nor operated on its behalf, a grand jury can only investigate the governmental agency to determine whether it is getting what it expected from the funding. It may not conduct a general investigation into the operation and finances of the nonprofit itself.

Questions Regarding Grand Jury Interviews:

36.Q. Can a local official the grand jury wants to interview require that the jury submit its interview questions to the official in advance?

A. No. Submitting interview questions in advance would improperly reveal the nature, scope, or direction of the grand jury's investigation and would thus violate the grand jury's confidentiality obligations. (See *Los Angeles Times v Superior Court* (2003) 114 Cal.App.4th 247)

37.Q. Can a grand jury go through an intermediary, such as an official's secretary, to set up interviews?

A. Yes, but care must be taken not to reveal the topic being investigated or any other confidential information.

38.Q. May an interviewee have counsel present while being interviewed by the grand jury?

A. No. A witness has no right to have counsel present during a grand jury interview. (*Farnow v Superior Court* (1990) 226 Cal.App.3d 481). Only the grand jurors and, when needed, a court-appointed interpreter may be present during an interview in a watchdog investigation. (PC §939) This is so even if the interviewee has been subpoenaed. However, CGJA believes that the interviewee may take a recess during the interview to leave the room to consult with counsel (but not to consult with a co-worker or a union representative).

39.Q. What is the difference between an admonition and an oath?

A. An admonition is a directive to an interviewee that the interviewee not reveal

questions asked by the jurors, the interviewee's responses to the questions, or any other matters concerning the investigation that the interviewee learned during the interview. An oath is a promise by a witness or interviewee to tell the truth. Grand juries rarely put interviewees under oath. Any juror can give the admonition. In contrast, only the foreperson, or in the foreperson's absence or disqualification, the pro tempore, may administer an oath. (PC §939.4)

40.Q. What should a grand jury do if an interviewee violates the admonition?

A. The grand jury should ask its legal advisor to contact the interviewee to reinforce the duty to preserve grand jury secrecy. Although a violation of a properly worded admonition may be punishable as contempt of court, contempt proceedings are rarely filed.

41.Q. Is there anyone a grand jury must interview when conducting an investigation?

A. Yes, with a very limited exception. The grand jury must "meet with the subject of the investigation regarding the investigation, unless the court ... determines that such a meeting would be detrimental." (PC §933.05(e)) CGJA believes that "the subject of the investigation" means the department head or other official or board in charge of the matter under investigation. CGJA suggests that the meeting be conducted as an interview. In some investigations, the jury will meet with more than one "subject," because the jury is investigating more than one department or entity. In addition to the meeting, the grand jury should always conduct an exit interview with the "subject" to ensure the accuracy of the draft report's findings. (See FAQ #46)

42.Q. Can a grand jury interview private individuals?

A. Yes. The grand jury may interview any person who has relevant information about the topic under investigation, including private individuals or persons employed by state or federal agencies.

43.Q. What can a grand jury do if a proposed interviewee refuses to attend the interview?

A. As a first step, the foreperson can try to determine the reason for the refusal and persuade the person to attend the interview. If the person still refuses to appear, the grand jury could ask its legal advisor to contact the reluctant interviewee. As a last resort, and if the person resides within California, a judge, the district attorney, or a district attorney's investigator may issue a subpoena on the grand jury's behalf, compelling the person to attend the interview as a witness. (PC §939.2)

44.Q. Can a grand jury conduct an interview by phone or by using a virtual meeting service?

A. While in-person interviews are always preferable, CGJA believes that a grand jury is not prohibited from conducting an interview by conference call or by using an electronic meeting service. However, care must be taken to confirm that the interview cannot be overheard by others. And there must always be at least two

jurors present and able to hear the whole content of the interview. (PC §916) If the interview is to be recorded, at the beginning of the interview, all the participants must identify themselves and consent to the recording (and anyone joining late must also do so) in order to comply with California's all-party consent wiretapping law. (PC §632)

45.Q. May a grand jury record an interview? May the interviewee?

A. A grand jury may record an interview, but only with the consent of all participants, including the interviewee. (See FAQ #44). An interviewee has no right to record the interview. The grand jury should refuse to allow an interviewee to record, or even take notes, in order to protect grand jury confidentiality.

46.Q. Must a grand jury conduct an exit interview?

A. Penal Code section 933.05(d) allows a grand jury to meet with a representative of the entity it investigated to read and discuss the findings contained in the final draft of the report. CGJA calls this meeting, which is conducted in an interview format, an "exit interview." While an exit interview is not required by law, CGJA highly recommends it so that the grand jury can confirm that its findings are accurate and up to date.

47.Q. How can the grand jury protect a witness?

A. In order to encourage candor from witnesses, the grand jury must conceal witnesses' identities from public disclosure. The names or facts that could lead to the identity of a source of information should never appear in a grand jury report. The jury should also interview enough employees or contractors holding similar jobs so that the entity cannot determine who provided the information in question. (See FAQ #53)

Questions Regarding Grand Jury Reports:

48.Q. Must a grand jury issue a consolidated final report?

A. No. Only individual reports are required. However, most grand juries also produce a consolidated report and release it at the end of the term. It includes all the individual reports released during the term (each of which covers a single investigation), plus ancillary materials which can include the foreperson's letter to the judge who supervised the jury and a list of the jury's investigative activities (such as the number of interviews conducted, without revealing the identity of witnesses, and the location of site visits). Some include forms for applying for grand jury service or requesting that the jury investigate a particular topic.

49.Q. Does the grand jury have to write a report on its county's prisons or jails?

A. No. A grand jury is required to "inquire" into the management and condition of "public prisons" in the county (PC §919(b)), including local detention facilities that hold adults over 24 hours, such as a county or city jail. The duty to inquire may be satisfied by a site visit, an interview of the person in charge of the facility, or a review of the most recent report on the facility by the Board of State and

Community Corrections. However, the Penal Code does not require the grand jury to write a report about that inquiry. In fact, a report must be based on a full investigation, and not just an inquiry, since all the report's facts must be verified. CGJA believes that if the grand jury issues a consolidated report, that report can include a list of the grand jury's site visits, including visits to detention facilities, as long as it does not reveal any evidence or findings.

50.Q. Are members of a grand jury permitted to file a minority report?

A. No. The grand jury speaks only as a unified body and must reach its decision to issue a report by a supermajority vote. (PC §916) There can be just one report from each investigation. (See *Unnamed Minority Members of the 1987-1988 Kern County Grand Jury v Superior Court* (1989) 208 Cal.App.3d 1344)

51.Q. May a grand jury include unverified evidentiary material in its report?

A. Only with the explicit approval of the presiding or supervising judge. With that approval, a report can discuss or have attached to it unverified evidentiary material (such as transcripts of interviews, counsel's opinion letters, or other "raw evidence"). Even with that approval, the evidentiary material cannot reveal the name, position, or facts that would identify any witness who provided information to the grand jury. (PC §929)

52.Q. May a grand jury issue an "informational" report (one without any findings)?

A. There is no authority for the grand jury to issue informational reports. The Penal Code requires grand jury reports to contain findings, and if problems are identified in the findings, they must also contain recommendations for corrective action. (PC §933(c)) The role of the grand jury is to determine the facts and issue findings (its analysis of what those facts "mean"), not just to record the evidence the jury uncovered.

53.Q. Can a grand jury report reveal the identity of witnesses?

A. No. A grand jury report must never reveal, directly or indirectly, the identity of any person who provided information to the grand jury. (*McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162; PC §929; see FAQs #47, 48, and 51))

54.Q. Is the grand jury required to have its draft reports reviewed by its legal advisor?

A. No. However, CGJA strongly recommends that the grand jury submit early and final drafts of each report to its legal advisor for review (unless the legal advisor is disqualified due to a conflict of interest). Counsel can confirm that the topic is within the jury's jurisdiction, verify the report's references to the law, help the jury avoid claims of defamation, and point out other possible problems with the report.

55.Q. Can a grand jury change its report before it is publicly distributed?

A. Yes. CGJA believes that one of the reasons for the requirement that the final report be given to the board of or official employed by the investigated entity at least two business days before it is made public (PC §933.05) is to give the board or official an opportunity to point out any errors in the report. The grand jury can

pull the report and consider whether to change it, perhaps after extending its investigation. If changes are made to the report, it must be both re-approved by a supermajority vote and re-submitted to the court for approval. However, there is no authority for a grand jury to revise a report once it has been released to the general public,

56.Q. Is there a “drop dead” date by which a grand jury must submit its final reports to the court?

A. Yes. The date is the end of the grand jury’s term. The term ends when the jury is discharged by the court or the succeeding jury is impaneled. “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.” (PC §933(a)) A grand jury has no power to submit reports after its term ends.

57.Q. Does Penal Code section 933(c) authorize a grand jury to require an appointed department head, such as a police chief, to respond to grand jury findings and recommendations in a grand jury report?

A. No. Penal Code section 933(a) allows a grand jury to submit its reports to "responsible officers, agencies, or departments, including the county board of supervisors." However, only governing bodies and "elected county officers or agency heads" are required to respond. (PC §933(c)) There is no requirement that any individual other than an elected official employed by county government respond. The grand jury may, however, invite, and will frequently receive, a response from other "responsible officers" such as an appointed local public official.

58.Q. May the grand jury invite individuals who are not local public officials to respond to a grand jury report?

A. No. The grand jury has no jurisdiction to investigate or report on federal or state officials or private individuals. Therefore, the grand jury may not require or request a state or federal official or a private person to respond to the findings or recommendations in a grand jury report. Similarly, it may not invite responses from the court or the succeeding grand jury, which are also outside its jurisdiction. Further, these individuals and entities are not “responsible” boards or persons. Penal Code section 933 requires that all respondents be “responsible,” which CGJA believes means responsible for the activity the jury investigated. (See FAQ #57)

59.Q. What may the grand jury do if a board or official refuses to accept and follow the recommendations in a grand jury report?

A. The grand jury cannot compel a local official or board to agree to or comply with its recommendations. Penal Code section 933.05 allows the respondent to decline to implement the report's recommendations. However, if the problem identified in the report continues to exist, a later grand jury can conduct a new investigation on that topic and issue its own report and its own findings and recommendations.

60.Q. Must grand juries evaluate responses to the previous jury’s reports?

A. No. However, CGJA recommends that juries review responses to prior grand jury reports for compliance with statutory mandates as to the timeliness of and wording for the response. No report is required, but if the jury does write a “compliance report,” CGJA recommends that it focus on only non-compliant responses to the recommendations. The jury may also investigate and report on whether the officials and boards have done what they represented in their responses they would do. An “implementation report” requires a full investigation. Monitoring responses and when appropriate following up on them, if conducted routinely year to year, will encourage governmental entities to treat grand jury reports seriously.