

## Bill would allow 2nd criminal grand jury | Current panel in great demand

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### Document Text

Superior Court Judge Michael Wellington's small courtroom on the fifth floor of the downtown courthouse has become the focus of interest for legal observers and political junkies alike.

That's because the veteran jurist's court is the site of the ongoing perjury trial of Chula Vista Councilman Steve Castaneda, who was indicted in June by a county criminal grand jury. It is the first case brought to trial by District Attorney Bonnie Dumanis' Public Integrity Unit, formed in 2006 to investigate whether public officials have committed wrongdoing. Castaneda is being prosecuted by the head of the unit, former federal prosecutor Patrick O'Toole.

As the trial prepared to get under way, another development was taking shape in a Capitol hearing room in Sacramento that may have a broader effect on county public officials.

There, the Assembly Public Safety Committee unanimously approved a bill pushed by Dumanis that would allow Superior Court officials to impanel two grand juries at once.

By law, only one criminal grand jury, with powers to investigate in secret and issue indictments, can be sitting. Los Angeles is the only county in the state allowed to have one more grand jury.

The bill analysis says prosecutors in San Diego want the additional grand jury "to address the increased number of public integrity cases and investigations."

Grand juries also are used to bring charges in complex cases where there are many defendants, the report said.

Prosecutors say having the ability to call a second panel of jurors will be more efficient. Time in front of the grand jury is now nearly booked solid, the report said, meaning some cases have to wait, others don't go in front of a grand jury at all, and some investigations are stalled.

Statistics seem to back that up. Since 2004, the number of days the criminal grand jury has been used has increased by 235 percent.

### Defense objections

Although a second grand jury would go a long way toward relieving those pressures, the bill already has stirred some opposition from local criminal-defense lawyers.

They say the bill, which is sponsored by Assemblyman Martin Garrick, R-Carlsbad, would reduce a key part of the criminal justice process -- the preliminary hearing, where prosecutors present evidence to persuade a judge to order a defendant to trial.

By securing a grand jury indictment, prosecutors do not have to go through a preliminary hearing and the case goes

straight to trial.

Although it is not difficult for prosecutors to prevail at a preliminary hearing -- the vast majority are set for trial -- the hearings provide a key check in the process, defense lawyers said.

During a grand jury investigation, evidence is presented in secret and defense lawyers are not allowed.

Prosecutors contend such concerns are not warranted because the number of grand jury indictments would still be very small.

Last year, the District Attorney's Office charged about 15,000 felonies, 40 of which were by indictment. That works out to 0.266 percent of cases.

O'Toole, who previously served as the U.S. attorney in San Diego, said in an interview that even doubling the amount of grand jury indictments would not create much of a change.

"We're not contemplating at all having two criminal grand juries going all the time," said O'Toole, who is the District Attorney's Office adviser to the grand jury. "I think there will be only a minimal increase in the number of indicted cases."

The bill is supported by the San Diego Superior Court. Public Defender Steve Carroll, whose office handles most of the criminal-defense work in the courts, is neutral on the bill, according to the committee report.

The San Diego Criminal Defense Bar Association, a group of private criminal-defense lawyers, opposes the measure.

"It lacks the transparency we want to see in the whole criminal justice system," President Michael Crowley said.

"A preliminary hearing gives us the opportunity to look witnesses in the eye, test the evidence from the prosecutor. And it gives us the opportunity to present evidence, too."

Earlier this month, a judge ruled there was not enough evidence to hold for trial one defendant, 17-year-old Jose Compre, charged in the killing of Oceanside police Officer Dan Bessant. Two others were held for trial.

The ruling came after a monthlong preliminary hearing in which Deputy Alternate Public Defender Mary Ellen Attridge aggressively challenged the evidence police had against Compre, her client.

Attridge said she would not have been able to do so if the case had been sent through the grand jury.

"The reason you have a prelim is so the defense can test, and the court can weigh, the strength of the prosecution's case," Attridge said.

Grand juries are not infallible, Attridge said. The old saw that a prosecutor could get a grand jury to indict a ham sandwich has some basis in truth.

Attridge represented one of three youths charged with murder in the death of Stephanie Crowe in Escondido in 1995. Prosecutors got a grand jury to indict the three.

Just before the trial was to begin, DNA evidence exonerated the trio; another man eventually was convicted of the killing.

"The grand jury is too frequently used to get otherwise deficient cases to a jury trial," Attridge said.

Increased workload

Also opposing the bill is California Attorneys for Criminal Justice, a statewide group of defense lawyers. Robert Sanger, a Santa Barbara lawyer who is on the group's legislative committee, said grand juries should be used sparingly.

"Grand juries have a special position," Sanger said. "They are really there to listen and review evidence and not be a rubber stamp."

In the past several years, Sanger said, more counties have used grand juries more frequently for criminal cases, and he finds that troubling.

O'Toole emphasized that is not the intent of the bill. Grand jury time is in more demand from both his office and the state Attorney General's Office in San Diego, which also conducts investigations and brings charges.

O'Toole also said that the grand jury is used more now than five years ago and that it is useful for conducting investigations, not all of which lead to indictments.

"The grand jury investigative process is a good way of finding things out confidentially and comprehensively," O'Toole said. "But we are not talking about a radical change here of how we prosecute cases and bring charges."

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<b>Abstract</b> (Document Summary)
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