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State of California

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OPINION	:	No. 79-313
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of	:	<u>May 18, 1979</u>
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Attorney General	:	
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Cecilia H. Johnson	:	
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SUBJECT: APPLICABILITY OF PENAL CODE SECTION 919(b)—Penal Code section 919, subdivision b, does not authorize the grand jury to investigate Atascadero State Hospital.

The Honorable Christopher G. Money, District Attorney, San Luis Obispo County, has requested an opinion on the following question:

Does Penal Code section 919, subdivision b, authorize the grand jury of San Luis Obispo County to investigate Atascadero State Hospital?

CONCLUSION

Penal Code section 919, subdivision b, does not authorize the grand jury to investigate Atascadero State Hospital.

## ANALYSIS

Penal Code section 919, subdivision b<sup>1</sup> states:

“The grand jury shall inquire into the condition and management of the public prisons within the county.”<sup>2</sup>

The intent of the Legislature must be ascertained in order to effectuate the purpose of the law and a statute must be given effect according to the usual and ordinary impact of its terms. *Moyer v. Workman’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.

The word “prison” has been defined as a place maintained by a public authority for the detention of those confined under legal process to insure their appearance for further proceedings, or for the confinement of those convicted of criminal offenses and sentenced therefor. (*People v. Upchurch* (1978) 76 Cal. App. 3d 721, 723; 39 Cal. Jur. 2d, Prisons and Prisoners, § 3, p. 638; Black’s Law Dict. (4th ed. 1951) p. 1358, col. 1; see gen. 72 C.J.S, Prisons, §§ 1, 4, pp. 848–852.) Atascadero State Hospital does not come within this definition. Its purpose is not incarceration of criminals or the detention of those under process to insure Court appearance but rather the care, treatment and education of the mentally disordered. (Welf. & Inst. Code §§ 4304, 7200.) Atascadero State Hospital falls under the jurisdiction of the Department of Mental Health (Welf. & Inst. Code § 4100), not under the Department of Corrections which administers the state prison system. (§§ 2000 *et seq.*, 5003.) Pursuant to Welfare and Institutions Code section 4132, mentally disordered persons are to be treated as patients to be provided care and treatment, not as inmates.

The fact Atascadero State Hospital is a secure facility housing among its population persons whose commitments arise after the commission of a criminal offense (see Welf. & Inst. Code § 6316, (mentally disordered sex offenders); Penal Code § 1026 (those not guilty by reason of insanity); Penal Code § 1370 (persons incompetent to stand trial for a criminal offense), and prisoners transferred from a state prison (Pen. Code § 2684)), does not render it a public prison.” Atascadero State Hospital may have some attributes in common with prisons, but its purpose is not incarceration and it is not a penal institution.

Those committed as mentally disordered sex offenders under Welfare and Institutions Code section 6316, insane under Penal Code section 1026, or mentally

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<sup>1</sup> Unless otherwise indicated, all section references are to the Penal Code.

<sup>2</sup> This opinion discusses only the scope of the grand jury’s authority under section 919 subdivision (b) as it relates to Atascadero State Hospital. A grand jury may, of course, exercise other powers pursuant to other statutes which may involve incidents or personnel at Atascadero State Hospital.

incompetent to stand trial under Penal Code section 1370 are not by their commitment serving a sentence for a criminal offense. They are committed for care and treatment. Those transferred from state prisons are transferred for treatment (§ 2684; Welf. & Inst. Code § 7227), and are returned to state prison upon recovery (§ 2685; Welf. & Inst. Code § 7375(g)).<sup>3</sup>

The conclusion that the term “public prison” does not include Atascadero State Hospital arises from the historical development of the state prisons and state hospitals as separate systems.

The substance of section 919 subdivision b, permitting inquiry by the grand jury into the conditions and management of “public prisons,” was enacted in 1851. (Stats. 1851 ch. 29, § 214.) At that time, the state prison, was a separate entity (Stats. 1851, ch. 14, p. 427, § 1; Stats, 1853, ch. 194, p. 911) from the institution for the insane which was first known as a “state hospital,” then as the “insane asylum of California.” (Stats. 1851, ch. 129, p. 506; Stats. 1853, ch. 203, p. 921; Stats. 1853, ch. 204, p. 926.) The state prison system and state hospital system have remained entirely separate and the purpose of the latter system has remained as the care and education of the mentally disordered. (See Pen. Code §§ 2000 *et seq.*, 5000 *et seq.*; Welf. & Inst. Code §§ 4000, 4100, 4304. See also Stats. 1903, ch. 364, p. 485 *et seq.*; Stats. 1915, ch. 60, p. 64, § 1; Stats. 1937, ch. 369, p. 1148; Stats. 1941, ch. 106, pp. 1083–1084, § 15.)<sup>4</sup>

Since the Legislature has consistently kept the state hospital and state prison systems separate in both name and function from their inception, we conclude that it did not intend the term “public prisons” to include state hospitals when it enacted Penal Code section 919(b).

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<sup>3</sup> It will be noted Welfare and Institutions Code section 7375, subdivision (g), states that once a prisoner transferred to a state hospital has recovered, he shall be “returned to prison,” pursuant to section 2685. This phrasing reinforces the fact prison in its common usage does not include state hospitals.

<sup>4</sup> Atascadero State Hospital was opened in the 1950’s and was established as a state hospital in 1951. (Stats. 1951. ch. 968, p. 2589, § 1.)