

HOUSE BILL 226

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO GRAND JURIES; PROVIDING THAT LAWFUL, COMPETENT AND RELEVANT EVIDENCE IS EVIDENCE ADMISSIBLE HCPAC→~~AT TRIAL~~←HCPAC HCPAC→~~UNDER THE NEW MEXICO RULES OF EVIDENCE~~←HCPAC ; PERMITTING THE TARGET OF A GRAND JURY INVESTIGATION TO OBTAIN NOTICE OF ESSENTIAL FACTS OF AN ACCUSATION AND OF THE TARGET'S RIGHT TO ALERT THE GRAND JURY OF CERTAIN EVIDENCE; CHANGING THE EARLIEST DATES AFTER WHICH A TARGET MAY TESTIFY; ALLOWING THE DISTRICT COURT TO DETERMINE COMPLIANCE WITH SECTION 31-6-11

.219085.1AIC February 23, 2021 (10:10am)

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NMSA 1978 (BEING LAWS 1969, CHAPTER 276, SECTION 11, AS AMENDED) AND TO DISMISS AN INDICTMENT WITHOUT PREJUDICE FOR A VIOLATION OF THAT SECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-6-11 NMSA 1978 (being Laws 1969, Chapter 276, Section 11, as amended) is amended to read:

"31-6-11. EVIDENCE BEFORE GRAND JURY.--

A. All evidence [~~before~~] presented to the grand jury [~~upon which it may find an indictment is that which is~~] shall be lawful, competent and relevant, including the oral testimony of witnesses under oath and any [~~documentary or other physical evidence exhibited~~] exhibits presented through witnesses to the jurors. [~~The Rules of Evidence shall not apply to a grand jury proceeding. The sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury.~~] Lawful, competent and relevant evidence is evidence that would be admissible HCPAC→~~at trial~~←HCPAC HCPAC→under the New Mexico Rules of Evidence, except that a witness under the age of thirteen years is not required to give testimony before the grand jury. The prosecution may also invoke Rule 11-510 of the New Mexico Rules of Evidence to prevent testimony that would disclose an informer←HCPAC .

B. It is the duty of the grand jury to weigh all

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the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it shall order the evidence produced. At least twenty-four hours before grand jury proceedings begin, the target or ~~[his]~~ the target's counsel may alert the grand jury to the existence of evidence that would disprove or reduce ~~[an]~~ a charge or accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence.

C. A district attorney shall use reasonable diligence to notify a person in writing that the person is the target of a grand jury investigation. Unless the district judge presiding over the grand jury determines by clear and convincing evidence that providing notification may result in flight by the target, result in obstruction of justice or pose a danger to another person, the target of a grand jury investigation shall be notified in writing of the following information:

- (1) that ~~[he]~~ the person is the target of an investigation;
- (2) the nature of the alleged crime being investigated, ~~[and]~~ the essential facts of the charge or accusation, the date of the alleged crime and any applicable

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statutory citations;

(3) the target's right to testify no earlier than ~~[four]~~ HCPAC ~~→~~ **ten** ~~←~~ HCPAC HCPAC ~~→~~ **seven** ~~←~~ HCPAC days after receiving the target notice if ~~[he]~~ the target is in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(4) the target's right to testify no earlier than ~~[ten]~~ twenty days after receiving the target notice if ~~[he]~~ the target is not in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(5) the target's right to choose to remain silent; ~~[and]~~

(6) the target's right to alert the grand jury to the existence of evidence that would disprove or reduce the charge or accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence no later than forty-eight hours before the grand jury session is completed; and

~~[(6)]~~ (7) the target's right to assistance of counsel during the grand jury investigation.

D. The district court may review the grand jury proceeding, the target notice, the indictment and the relevancy, competency and lawfulness of the evidence that was

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presented to the grand jury to determine compliance with this section. The district court may dismiss the indictment without prejudice upon its finding of a violation of this section."

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