

AN ACT

RELATING TO GRAND JURIES; CHANGING PROCEDURES FOR GRAND JURY HEARINGS; PROVIDING THE TARGET OF A GRAND JURY HEARING WITH NOTICE OF HIS STATUS AS A TARGET; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-6-3 NMSA 1978 (being Laws 1969, Chapter 276, Section 3) is amended to read:

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"31-6-3. CHALLENGE TO GRAND JURY.--Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the grand jury. A failure to file such motion is a waiver of the challenge.

Grounds that may be presented by such motion are limited to the following:

- A. the grand jury was not selected in accordance with law;
- B. a member of the grand jury returning the indictment was ineligible to serve as a juror;
- C. a member of the grand jury returning the indictment was a witness or is likely to become a witness; or
- D. a member of the grand jury returning the indictment was not qualified to serve due to a conflict of interest, bias, partiality or inability to follow the law."

Section 2. Section 31-6-4 NMSA 1978 (being Laws 1969, Chapter 276, Section 4, as amended) is amended to read:

"31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF HEARINGS--

WITNESSES PERMITTED TO HAVE ATTORNEY PRESENT.--

A. A grand jury shall conduct its hearing during the usual business hours of the court which convened it. Hearings and deliberations may be conducted at any place ordered by the convening judge and provided by the court. Inspections or grand jury views of places under inquiry may be made when directed by the foreman wherever deemed necessary within the county, but no oral testimony or other evidence may be received except during formal private sessions.

B. All deliberations shall be conducted in a private room outside the hearing or presence of any person other than the grand jury members. All taking of testimony shall be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target.

C. Persons required or entitled to be present at the taking of testimony before the grand jury include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target. Security personnel may be present only with special leave of the district court and are neither potential witnesses nor otherwise interested parties in the matter being presented to the grand jury.

D. If a target has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings. At least twenty-four hours before grand jury proceedings begin, the target's attorney may submit proposed questions and exhibits to the district attorney or the attorney general."

Section 3. Section 31-6-5 NMSA 1978 (being Laws 1969, Chapter 276,
Section 5, as amended) is amended to read:

"31-6-5. RETURN OF INDICTMENTS.--Indictments shall be returned by the
grand jury within twenty-four hours following the day when the indictment is voted.
Indictments shall not name persons as unindicted coconspirators. Indictments may be
filed and prosecution and trial had thereon without regard to court terms. No-bills shall
be sealed and filed with the district court clerk. Upon application to the court by the
state for good cause shown, or upon request by the target, the court may release a
sealed no-bill."

Section 4. Section 31-6-7 NMSA 1978 (being Laws 1969, Chapter 276,
Section 7, as amended) is amended to read:

"31-6-7. ASSISTANCE FOR GRAND JURY--REPORT.--

A. The district court shall assign necessary personnel to aid the grand
jury in carrying out its duties. The district attorney or his assistants shall attend the
grand jury, examine witnesses and prepare indictments, reports and other
undertakings of the grand jury.

B. When engaged in the investigation of an offense over which he has
jurisdiction, the attorney general or his assistants may attend a grand jury, examine
witnesses and prepare indictments, reports and other undertakings of the grand jury.

C. When a grand jury is convened in response to a citizens' grand jury
petition pursuant to Article 2, Section 14 of the constitution of New Mexico, the district
attorney or his assistants, unless otherwise disqualified, shall attend and conduct the
grand jury.

D. A prosecuting attorney attending a grand jury and all grand jurors

shall conduct themselves in a fair and impartial manner at all times during grand jury proceedings.

E. A grand jury, in its discretion, may make a formal, written report as to the condition and operation of any public office or institution it has investigated. The report shall not charge any public officer or other person with willful misconduct, corruption or malfeasance unless an indictment or accusation for removal from public office is also returned by the grand jury. The right of every person to be properly charged, face his accusers and be heard in his defense in open court shall not be circumvented by the report."

Section 5. 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. Evidence before the grand jury upon which it may find an indictment is that which is lawful, competent and relevant, including the oral testimony of witnesses under oath and any documentary or other physical evidence exhibited 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.

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

may alert the grand jury to the existence of evidence that would disprove or reduce an 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 is the target of an investigation;
- (2) the nature of the alleged crime being investigated and the date of the alleged crime and any applicable statutory citations;
- (3) the target's right to testify no earlier than four days after receiving the target notice if he 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 days after receiving the target notice if he 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 assistance of counsel during the grand jury investigation."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

HJC/HB 109

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