

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 109

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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.

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:

"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:

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1           A. the grand jury was not selected in accordance  
2 with law;

3           B. a member of the grand jury returning the  
4 indictment was ineligible to serve as a juror; [~~or~~]

5           C. a member of the grand jury returning the  
6 indictment was a witness [~~against the person indicted~~] or is  
7 likely to become a witness; or

8           D. a member of the grand jury returning the  
9 indictment was not qualified to serve due to a conflict of  
10 interest, bias, partiality or inability to follow the law."

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

13           "31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF  
14 HEARINGS--WITNESSES PERMITTED TO HAVE ATTORNEY PRESENT.--

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

23           B. All deliberations [~~will~~] shall be conducted in a  
24 private room outside the hearing or presence of any person  
25 other than the grand jury members. All taking of testimony

1     ~~[with]~~ shall be in private with no persons present other than  
 2     the grand jury, the persons required or entitled to assist the  
 3     grand jury and the attorney, if any, of the target ~~[witness]~~.

4             C. Persons required or entitled to be present at  
 5     the taking of testimony before the grand jury ~~may~~ include the  
 6     district attorney and the attorney general and their staffs,  
 7     interpreters, court reporters, security officers, the witness  
 8     and an attorney for the target ~~[witness; provided that such]~~.  
 9     Security personnel may be present only with special leave of  
 10    the district court and are neither potential witnesses nor  
 11    otherwise interested parties in the matter being presented to  
 12    the grand jury.

13            D. If a target ~~[witness]~~ has his attorney present,  
 14    the attorney may be present only while the target witness is  
 15    testifying ~~[and may advise the witness but may not speak so~~  
 16    ~~that he can be heard by the grand jurors or otherwise~~  
 17    ~~participate in the proceedings]~~. The target's attorney may  
 18    submit proposed questions and exhibits to the district attorney  
 19    or the attorney general."

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

22            "31-6-5. RETURN OF INDICTMENTS. -- Indictments shall be  
 23    returned by the grand jury within twenty-four hours following  
 24    the day when the indictment is voted. Indictments shall not  
 25    name persons as unindicted coconspirators. Indictments may be

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1 filed and prosecution and trial had thereon without regard to  
2 court terms. No-bills shall be sealed and filed with the  
3 district court clerk. Upon application to the court by the  
4 state [~~or the person named in the proposed indictment, the~~  
5 ~~court may release a sealed no-bill~~] for good cause shown, or  
6 upon request by the target, the court may release a sealed no-  
7 bill. "

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

10 "31-6-7. ASSISTANCE FOR GRAND JURY--REPORT.--

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

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

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

1           D. A prosecuting attorney attending a grand jury  
2 and all grand jurors shall conduct [~~himself~~] themselves in a  
3 fair and impartial manner at all times [~~when assisting the~~  
4 ~~grand jury~~] during grand jury proceedings.

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

14           Section 5. Section 31-6-9 NMSA 1978 (being Laws 1969,  
15 Chapter 276, Section 9, as amended) is amended to read:

16           "31-6-9. CHARGE TO GRAND JURY--QUESTIONS OF LAW--

17           A. The district judge convening a grand jury shall  
18 charge it with its duties and direct it as to any special  
19 inquiry into violations of law that he wishes it to make.

20           B. The district judge presiding over a grand jury  
21 shall make determinations regarding disputed questions of law  
22 before the grand jury that are brought to the court's attention  
23 by the grand jury foreman, the prosecuting attorney or the  
24 target."

25           Section 6. Section 31-6-11 NMSA 1978 (being Laws 1969,

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1 Chapter 276, Section 11, as amended) is amended to read:

2 "31-6-11. EVIDENCE BEFORE GRAND JURY. --

3 A. Evidence before the grand jury upon which it may  
4 find an indictment is that which is lawful, competent and  
5 relevant, including the oral testimony of witnesses under oath  
6 and any documentary or other physical evidence exhibited to the  
7 jurors. The Rules of Evidence shall not apply to a grand jury  
8 proceeding. The sufficiency [~~or competency~~] of the evidence  
9 upon which an indictment is returned shall not be subject to  
10 review absent a showing of bad faith on the part of the  
11 prosecuting attorney assisting the grand jury.

12 B. It is the duty of the grand jury to weigh all  
13 the evidence submitted to it, and when it has reason to believe  
14 that other lawful, competent and relevant evidence is available  
15 that may [~~explain away or~~] disprove or reduce a charge or  
16 accusation or that would make an indictment unjustified, then  
17 it [~~should~~] shall order the evidence produced. [~~The target~~  
18 ~~shall be notified of his target status and be given an~~  
19 ~~opportunity to testify, if he desires to do so, unless the~~  
20 ~~prosecutor determines that notification may result in flight,~~  
21 ~~endanger other persons, obstruct justice or the prosecutor is~~  
22 ~~unable with reasonable diligence to notify said person. A~~  
23 ~~showing of reasonable diligence in notifying the target by the~~  
24 ~~prosecutor is not required unless and until the target~~  
25 ~~establishes actual and substantial prejudice as a result of an~~

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1 ~~alleged failure by the prosecutor to exercise reasonable~~  
2 ~~diligence in notifying the target of his target status before~~  
3 ~~the grand jury. The prosecuting attorney assisting the grand~~  
4 ~~jury shall present evidence that directly negates the guilt of~~  
5 ~~the target where he is aware of such evidence.] The target or  
6 his counsel may alert the grand jury to the existence of  
7 evidence that may disprove or reduce an accusation or that  
8 would make an indictment unjustified, by notifying the  
9 prosecuting attorney who is assisting the grand jury in writing  
10 regarding the existence of that evidence.~~

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

20 (1) that he is the target of an investigation;

21 (2) the nature of the alleged crime being  
22 investigated and the date of the alleged crime and any  
23 applicable statutory citations;

24 (3) the target's right to testify no earlier  
25 than five days after receiving the target notice if he is in

1 custody, unless for good cause the presiding judge orders a  
2 different time period or the target agrees to testify sooner;

3 (4) the target's right to testify no earlier  
4 than fifteen days after receiving the target notice if he is  
5 not in custody, unless for good cause the presiding judge  
6 orders a different time period or the target agrees to testify  
7 sooner;

8 (5) the target's right to choose to remain  
9 silent; and

10 (6) the target's right to assistance of  
11 counsel during the grand jury investigation."

12 Section 7. EFFECTIVE DATE. --The effective date of the  
13 provisions of this act is July 1, 2003.

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