

HOUSE BILL 226

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

INTRODUCED BY

Karen C. Bash

AN ACT

RELATING TO GRAND JURIES; PROVIDING THAT LAWFUL, COMPETENT AND RELEVANT EVIDENCE IS EVIDENCE ADMISSIBLE AT TRIAL; 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 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.--

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

13           B. It is the duty of the grand jury to weigh all  
14 the evidence submitted to it, and when it has reason to believe  
15 that other lawful, competent and relevant evidence is available  
16 that would disprove or reduce a charge or accusation or that  
17 would make an indictment unjustified, then it shall order the  
18 evidence produced. At least twenty-four hours before grand  
19 jury proceedings begin, the target or [~~his~~] the target's  
20 counsel may alert the grand jury to the existence of evidence  
21 that would disprove or reduce [~~an~~] a charge or accusation or  
22 that would make an indictment unjustified, by notifying the  
23 prosecuting attorney who is assisting the grand jury in writing  
24 regarding the existence of that evidence.

25           C. A district attorney shall use reasonable

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1 diligence to notify a person in writing that the person is the  
2 target of a grand jury investigation. Unless the district  
3 judge presiding over the grand jury determines by clear and  
4 convincing evidence that providing notification may result in  
5 flight by the target, result in obstruction of justice or pose  
6 a danger to another person, the target of a grand jury  
7 investigation shall be notified in writing of the following  
8 information:

9 (1) that [~~he~~] the person is the target of an  
10 investigation;

11 (2) the nature of the alleged crime being  
12 investigated, [~~and~~] the essential facts of the charge or  
13 accusation, the date of the alleged crime and any applicable  
14 statutory citations;

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

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

25 (5) the target's right to choose to remain

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1 silent; ~~and~~

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

9 ~~(6)~~ (7) the target's right to assistance of  
10 counsel during the grand jury investigation.

11 D. The district court may review the grand jury  
12 proceeding, the target notice, the indictment and the  
13 relevancy, competency and lawfulness of the evidence that was  
14 presented to the grand jury to determine compliance with this  
15 section. The district court may dismiss the indictment without  
16 prejudice upon its finding of a violation of this section."

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