

HOUSE BILL 226

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

INTRODUCED BY

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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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underscoring material = new
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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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