

AN ACT

RELATING TO GRAND JURIES; CHANGING PROCEDURES FOR GRAND JURY PROCEEDINGS; PROVIDING THE TARGET OF A GRAND JURY PROCEEDING WITH NOTICE OF HIS TARGET STATUS; 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:

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 not qualified to serve due to a conflict of interest, bias, partiality or inability to follow the law; or

D. a member of the grand jury returning the indictment was a potential witness in the grand jury

proceedings."

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 will be conducted in a private room outside the hearing or presence of any person other than the grand jury members. All taking of testimony will 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 may include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target; provided that such 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. If a target has his attorney present, the attorney may participate in the proceedings by assisting the target's testimony and assisting other witnesses who testify on behalf of the target."

Section 3. 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.--The district court shall assign court reporters, bailiffs, interpreters, clerks or other persons as required to aid the grand jury in carrying out its duties. The attorney general, when requested by the district court, shall assist the grand jury. The district attorney shall attend the grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury. The prosecuting attorney and all grand jurors shall conduct themselves in a fair and impartial manner at all times during the grand jury proceedings."

Section 4. 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 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 may disprove or reduce a charge or accusation or that would make an indictment unjustified, then it should order the evidence produced. The district attorney assisting the grand jury, when he is aware of the existence of other lawful, competent or relevant evidence, shall present that evidence to the grand jury.

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 attorney determines 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 target's right to choose to remain

silent;

(3) the statutory requirement that the grand jury be presented with all lawful, competent and relevant evidence; and

(4) the target's right to present instructions regarding applicable lesser offenses to the grand jury."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____