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HOUSE BILL 409

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

W. Ken Martinez

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

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:

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

8           [~~C.~~] D. a member of the grand jury returning the  
9 indictment was a potential witness [against the person  
10 indicted] in the grand jury proceedings. "

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 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

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1 will be in private with no persons present other than the  
2 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. If a target [ witness] has his attorney  
13 present, the attorney may ~~[ be present only while the target~~  
14 ~~witness is testifying and may advise the witness but may not~~  
15 ~~speak so that he can be heard by the grand jurors or otherwise~~  
16 ~~participate in the proceedings]~~ participate in the proceedings  
17 by assisting the target's testimony and assisting other  
18 witnesses who testify on behalf of the target."

19 Section 3. Section 31-6-7 NMSA 1978 (being Laws 1969,  
20 Chapter 276, Section 7, as amended) is amended to read:

21 "31-6-7. ASSISTANCE FOR GRAND JURY. --The district court  
22 shall assign court reporters, bailiffs, interpreters, clerks  
23 or other persons as required to aid the grand jury in carrying  
24 out its duties. The attorney general, when requested by the  
25 district court, shall assist the grand jury. The district

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1 attorney shall attend the grand jury, examine witnesses and  
2 prepare indictments, reports and other undertakings of the  
3 grand jury. The prosecuting attorney and all grand jurors  
4 shall conduct [~~himself~~] themselves in a fair and impartial  
5 manner at all times [~~when assisting~~] during the grand jury  
6 proceedings. "

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

9 "31-6-11. EVIDENCE BEFORE GRAND JURY. --

10 A. Evidence before the grand jury upon which it  
11 may find an indictment is that which is lawful, competent and  
12 relevant, including the oral testimony of witnesses under oath  
13 and any documentary or other physical evidence exhibited to  
14 the jurors. The sufficiency [~~or competency~~] of the evidence  
15 upon which an indictment is returned shall not be subject to  
16 review absent a showing of bad faith on the part of the  
17 prosecuting attorney assisting the grand jury.

18 B. It is the duty of the grand jury to weigh all  
19 the evidence submitted to it, and when it has reason to  
20 believe that other lawful, competent and relevant evidence is  
21 available that may [~~explain away or~~] disprove or reduce a  
22 charge or accusation or that would make an indictment  
23 unjustified, then it should order the evidence produced. [ ~~The~~  
24 ~~target shall be notified of his target status and be given an~~  
25 ~~opportunity to testify, if he desires to do so, unless the~~

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1 ~~prosecutor determines that notification may result in flight,~~  
2 ~~endanger other persons, obstruct justice or the prosecutor is~~  
3 ~~unable with reasonable diligence to notify said person. A~~  
4 ~~showing of reasonable diligence in notifying the target by the~~  
5 ~~prosecutor is not required unless and until the target~~  
6 ~~establishes actual and substantial prejudice as a result of an~~  
7 ~~alleged failure by the prosecutor to exercise reasonable~~  
8 ~~diligence in notifying the target of his target status before~~  
9 ~~the grand jury. The prosecuting attorney assisting the grand~~  
10 ~~jury shall present evidence that directly negates the guilt of~~  
11 ~~the target where he is aware of such evidence.] The district~~  
12 attorney assisting the grand jury, when he is aware of the  
13 existence of other lawful, competent or relevant evidence,  
14 shall present that evidence to the grand jury.

15 C. A district attorney shall use reasonable  
16 diligence to notify a person in writing that the person is the  
17 target of a grand jury investigation. Unless the district  
18 attorney determines that providing notification may result in  
19 flight by the target, result in obstruction of justice or pose  
20 a danger to another person, the target of a grand jury  
21 investigation shall be notified in writing of the following  
22 information:

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

25 (2) the nature of the crime being

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1 investigated, including the elements of the crime and any  
2 applicable statutory citations;

3 (3) the target's right to testify by way of  
4 questioning conducted by the target's counsel no earlier than  
5 ten days after service of the target notice, unless the target  
6 agrees to testify sooner;

7 (4) the target's right to choose to remain  
8 silent;

9 (5) the statutory requirement that the grand  
10 jury be presented with all lawful, competent and relevant  
11 evidence; and

12 (6) the target's right to present  
13 instructions regarding applicable lesser offenses to the grand  
14 jury."

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

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 22, 1999  
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8 Mr. Speaker:  
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10 Your JUDICIARY COMMITTEE, to whom has been referred  
11

12 HOUSE BILL 409  
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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.  
16

17 Respectfully submitted,  
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21 R. David Pederson, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJC/HB 409

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

6 (Chief Clerk)

(Chief Clerk)

8 Date \_\_\_\_\_

10 The roll call vote was 7 For 4 Against

11 Yes: 7

12 No: Mallory, Taylor, Thompson, Vaughn

13 Excused: Luna

14 Absent: None

16 J:\99BillsWP\H0409

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1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSI ON, 1999

HB 409/a

3  
4 March 14, 1999

5 Mr. Presi dent:

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7 Your JUDI CIARY COMMI TTEE, to whom has been referred

8 HOUSE BILL 409

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10 has had it under consideration and reports same with  
11 recommendation that it DO PASS, amended as follows:

- 12
- 13 1. On page 5, strike line 25 in its entirety.
  - 14
  - 15 2. On page 6, strike lines 1 through 6 in their entirety.
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  - 17 3. Renumber succeeding paragraphs.

18 Respectfully submit ted,

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24 Michael S. Sanchez, Chai rman

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 3 For 2 Against

Yes: 3

No: Payne, Stockard

Excused: Aragon, Davis, Lopez

Absent: None

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