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HOUSE BILL 19

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Dayan Hochman-Vigil and Melanie A. Stansbury

AN ACT

RELATING TO GRAND JURIES; ALLOWING METROPOLITAN COURTS TO  
CONVENE GRAND JURIES; PROVIDING FOR ELECTRONIC RECORDING AS AN  
ALTERNATIVE RECORDING METHOD IN GRAND JURY PROCEEDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 31-6-1 NMSA 1978 (being Laws 1969,  
Chapter 276, Section 1, as amended) is amended to read:

"31-6-1. GRAND JURY PANELS--CALLING--QUALIFYING.--~~[The]~~ A  
district or metropolitan judge may convene one or more grand  
juries at any time, without regard to court terms. A grand  
jury shall serve for a period of no longer than three months.  
The ~~[district]~~ judge shall summon and qualify as a panel for  
grand jury service such number of jurors as ~~[he]~~ the judge  
deems necessary. Each grand jury shall be composed of twelve  
regular jurors and a sufficient number of alternates to

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1 [insure] ensure the continuity of the inquiry and the taking of  
2 testimony. All deliberations shall be conducted by any twelve  
3 jurors, [~~comprised~~] composed of regular jurors or substituted  
4 alternates. No more than twelve jurors [~~may~~] shall deliberate.  
5 [~~No~~] A juror [~~may~~] shall not vote on an indictment unless the  
6 juror has heard all evidence presented on the charge. The  
7 [~~district~~] judge may discharge or excuse members of a grand  
8 jury and substitute alternate grand jurors as necessary. The  
9 names of jurors summoned for grand jury service shall be drawn  
10 from the master jury wheel of the district court for the  
11 county."

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

14 "31-6-2. [~~FOREMAN~~] FOREPERSON OF GRAND JURY.--The jurors  
15 of a grand jury shall select one [~~of their number~~] member to  
16 serve as [~~foreman~~] foreperson of the grand jury. The [~~foreman~~]  
17 foreperson:

18 A. shall:

19 (1) preside over the sessions of the grand  
20 jury; [~~The foreman shall~~]

21 (2) administer oaths to witnesses; [~~The~~  
22 ~~foreman will~~] and

23 (3) sign all reports, indictments or other  
24 undertakings of the grand jury; [~~The foreman~~] and

25 B. may:

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1                   (1) appoint one member of the grand jury as a  
2 clerk to aid in the keeping of notes or minutes and the  
3 tallying of votes during secret sessions when no persons other  
4 than grand jury members [~~may~~] shall be present; [~~The foreman~~  
5 ~~may~~]

6                   (2) recess the sessions of the grand jury and  
7 reconvene them; [~~The foreman~~] and

8                   (3) for good cause, [~~may~~] request the district  
9 or metropolitan court to excuse or discharge individual grand  
10 jurors and to replace them with alternate grand jurors as  
11 necessary to continue the work of the grand jury."

12           SECTION 3. Section 31-6-4 NMSA 1978 (being Laws 1969,  
13 Chapter 276, Section 4, as amended) is amended to read:

14           "31-6-4. TIME AND PLACE FOR HEARING--PRIVACY OF  
15 HEARINGS--~~[WITNESSES]~~ TARGET WITNESS PERMITTED TO HAVE ATTORNEY  
16 PRESENT.--

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

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1           B. ~~[All deliberations shall be conducted in a~~  
2 ~~private room outside the hearing or presence of any person~~  
3 ~~other than the grand jury members.]~~ All taking of testimony  
4 shall be in private with no persons present other than:

5                 (1) the grand jury ~~[the];~~

6                 (2) persons required or entitled to assist the  
7 grand jury ~~[and the attorney, if any, of the target.]~~

8           C. ~~Persons required or entitled to be present at~~  
9 ~~the taking of testimony before the grand jury include],~~  
10 including:

11                 (a) the district attorney ~~[and]~~ or the  
12 attorney general and their staffs;

13                 (b) interpreters;

14                 (c) court reporters;

15                 (d) with special leave of the district  
16 or metropolitan court, security officers; provided, however,  
17 that the officers shall not be potential witnesses nor  
18 otherwise interested parties in the matter being presented to  
19 the grand jury; and

20                 (e) the witness ~~[and an attorney for the~~  
21 ~~target. Security personnel may be present only with special~~  
22 ~~leave of the district court and are neither potential witnesses~~  
23 ~~nor otherwise interested parties in the matter being presented~~  
24 ~~to the grand jury.]~~

25           D. ~~If a target has his attorney present]~~ providing

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1 testimony; and

2 (3) an attorney for the target witness, if the  
3 target witness has one; provided, however, that the attorney  
4 may be present only while the target ~~[witness]~~ is testifying  
5 and may advise the ~~[witness]~~ target but may not speak so ~~[that~~  
6 ~~he can]~~ as to be heard by the grand jurors or otherwise  
7 participate in the proceedings. At least twenty-four hours  
8 before grand jury proceedings begin, the target's attorney may  
9 submit proposed questions and exhibits to the district attorney  
10 or the attorney general.

11 C. All deliberations shall be conducted in a  
12 private room outside the hearing or presence of any person  
13 other than the grand jury members."

14 SECTION 4. Section 31-6-5 NMSA 1978 (being Laws 1969,  
15 Chapter 276, Section 5, as amended) is amended to read:

16 "31-6-5. RETURN OF INDICTMENTS.--Indictments shall be  
17 returned by the grand jury within twenty-four hours following  
18 the day when the indictment is voted. Indictments shall not  
19 name persons as unindicted coconspirators. Indictments may be  
20 filed and prosecution and trial had thereon without regard to  
21 court terms. No-bills shall be sealed and filed with the  
22 district court or metropolitan court clerk. Upon application  
23 to the court by the state for good cause shown, or upon request  
24 by the target, the court may release a sealed no-bill."

25 SECTION 5. Section 31-6-6 NMSA 1978 (being Laws 1969,

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1 Chapter 276, Section 6, as amended) is amended to read:

2 "31-6-6. OATHS--GRAND JURORS--WITNESSES--OFFICERS--  
3 PENALTY.--

4 A. The following oaths shall be administered by the  
5 district or metropolitan judge to jurors, officers of the court  
6 or others assigned to assist the grand jury, and by the  
7 [~~foreman~~] foreperson to witnesses:

8 (1) JUROR OATH: "You, as members of this  
9 grand jury, do swear (or affirm) that you will diligently  
10 inquire and true indictment make, of all public offenses  
11 against the people of this state, committed or triable within  
12 this county, of which you shall receive legal evidence; that  
13 you shall indict no person through malice, hatred or ill will;  
14 nor have any not indicted through fear, favor or affection, or  
15 for any reward or the hope or promise thereof; but in all your  
16 indictments, reports or undertakings, you shall present the  
17 truth, according to the best of your skill and understanding,  
18 and further that you will forever keep secret whatever you or  
19 any other juror may have said or in what manner you or any  
20 other juror may have voted on any matter before you; and that  
21 you will keep secret the testimony of any witness heard by you  
22 unless ordered by the court to disclose the same in the trial  
23 or prosecution of the witness for perjury before the grand  
24 jury, so help you God.";

25 (2) OATH FOR OFFICER OR OTHER PERSON: "You do

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1 swear (or affirm) that you will keep secret all proceedings  
2 occurring in your presence or of which you may learn as a  
3 result of your service in aid of the grand jury, so help you  
4 God."; and

5 (3) OATH FOR WITNESS: "You do swear (or  
6 affirm) that the testimony [~~which~~] that you are about to give  
7 will be the truth, so help you God."

8 B. Any person found to have violated the oath under  
9 Paragraph (1) or (2) of Subsection A of this section shall be  
10 guilty of a misdemeanor. This subsection shall not apply to  
11 communications by the prosecuting attorney to [~~his~~] the  
12 prosecuting attorney's staff or grand jury aides and in  
13 obtaining and presenting evidence, preparing indictments,  
14 reports and other undertakings of the grand jury and in  
15 preparation for trial."

16 SECTION 6. Section 31-6-8 NMSA 1978 (being Laws 1969,  
17 Chapter 276, Section 8, as amended) is amended to read:

18 "31-6-8. RECORD OF TESTIMONY.--All proceedings in the  
19 grand jury room, with the exception of the deliberations of the  
20 grand jury, shall be electronically recorded or reported  
21 verbatim. [~~and~~] If the proceedings are electronically  
22 recorded, all files shall be deposited with the clerk or other  
23 officer as directed by the judge of the court. If the  
24 proceedings are reported verbatim, the notes or transcriptions  
25 [~~thereof~~] shall be certified by the court reporter or

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1 stenographer making them, with the notes or transcriptions then  
2 deposited with the clerk or other officer of the [district]  
3 court as directed by the [district] judge. Upon order of the  
4 [district] court in cases where an indictment is returned, the  
5 notes, if available, may be caused to be transcribed and  
6 certified by the stenographer or court reporter who made them  
7 [~~if available~~] or by another person qualified and competent to  
8 transcribe them accurately. Copies of documentary evidence, or  
9 a summary thereof if directed by the [district] court,  
10 exhibited to the grand jury shall be made a part of the record.  
11 In cases where an indictment is not returned, the electronic  
12 record, notes or transcriptions shall be destroyed unless  
13 ordered by the [district] judge to be preserved for good cause  
14 shown, including [~~but not limited to~~] the prosecution of a  
15 witness for perjury."

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

18 "31-6-9. CHARGE TO GRAND JURY.--The district or  
19 metropolitan judge convening a grand jury shall charge it with  
20 its duties and direct it as to any special inquiry into  
21 violations of law that [~~he~~] the judge wishes it to make."

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

24 "31-6-11. EVIDENCE BEFORE GRAND JURY.--

25 A. Evidence before the grand jury upon which it may

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1 find an indictment is that which is lawful, competent and  
2 relevant, including the oral testimony of witnesses under oath  
3 and any documentary or other physical evidence exhibited to the  
4 jurors. The rules of evidence shall not apply to a grand jury  
5 proceeding. The sufficiency of the evidence upon which an  
6 indictment is returned shall not be subject to review absent a  
7 showing of bad faith on the part of the prosecuting attorney  
8 assisting the grand jury.

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

21 C. A district attorney shall use reasonable  
22 diligence to notify a person in writing that the person is the  
23 target of a grand jury investigation. Unless the district or  
24 metropolitan judge presiding over the grand jury determines by  
25 clear and convincing evidence that providing notification may

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1 result in flight by the target, result in obstruction of  
2 justice or pose a danger to another person, the target of a  
3 grand jury investigation shall be notified in writing of the  
4 following information:

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

7 (2) the nature of the alleged crime being  
8 investigated and the date of the alleged crime and any  
9 applicable statutory citations;

10 (3) the target's right to testify no earlier  
11 than four days after receiving the target notice if [~~he~~] the  
12 target is in custody, unless for good cause the presiding judge  
13 orders a different time period or the target agrees to testify  
14 sooner;

15 (4) the target's right to testify no earlier  
16 than ten days after receiving the target notice if [~~he~~] the  
17 target is not in custody, unless for good cause the presiding  
18 judge orders a different time period or the target agrees to  
19 testify sooner;

20 (5) the target's right to choose to remain  
21 silent; and

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

24 SECTION 9. Section 31-6-12 NMSA 1978 (being Laws 1969,  
25 Chapter 276, Section 12, as amended) is amended to read:

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1 "31-6-12. SUBPOENA POWERS--NOTICE TO WITNESSES.--

2 A. The grand jury has power to order the attendance  
3 of witnesses before it, to cause the production of all public  
4 and private records or other evidence relevant to its inquiry  
5 and to enforce such power by subpoena issued on its own  
6 authority through the district or metropolitan court convening  
7 the grand jury and executed by any public officer charged with  
8 the execution of legal process of the [~~district~~] convening  
9 court; provided that all subpoenaed witnesses shall be given a  
10 minimum of [~~thirty-six hours~~] thirty-six hours' notice unless  
11 a shorter period is specifically approved for each witness by a  
12 judge of the [~~district~~] convening court.

13 B. The target of the investigation shall not be  
14 subpoenaed except where it is found by the prosecuting attorney  
15 to be essential to the investigation. If the target and [~~his~~]  
16 the target's attorney, if [~~he has~~] there is one, sign a  
17 document stating that the target will assert the fifth  
18 amendment, [~~he~~] that the target shall be excused from  
19 testifying on those matters as to which the district or  
20 metropolitan judge determines [~~he~~] the target has a valid fifth  
21 amendment privilege.

22 C. Subpoenas directed to witnesses shall be  
23 returnable only when the grand jury is sitting."

24 SECTION 10. Section 31-6-13 NMSA 1978 (being Laws 1969,  
25 Chapter 276, Section 13) is amended to read:

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