

HB190

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## Bill Analysis 2023 Regular Session

**SPONSOR:** Representative Gail Chasey

**SHORT TITLE:** Admission of Certain Grand Jury Evidence

**SYNOPSIS OF BILL:** Requires only lawful, competent, and relevant evidence to be presented to the grand jury with judicial review for enforcement. Expands the notice time from 10 to twenty 20 days and includes a requirement that not only the proposed charges be disclosed in the notice, but also essential facts of the allegations. Expands the *Bort-Jones* alert letter from only exculpatory evidence to include evidence that supports reduced charges.

**STRENGTHS:** Current law already requires “lawful, competent and relevant evidence” at grand jury proceedings. However, that statute has no enforcement mechanism. In 2018, the Supreme Court held that, absent statutory authorization, a district court could not overturn an otherwise lawful grand jury indictment because of trial inadmissibility or improprieties in acquiring the evidence considered by grand jury. *State v. Martinez*, 2018-NMSC-031, 420 P.3d 568. Therefore, under the current system, indictments can be obtained on evidence that is not admissible at a trial, such as hearsay, and that indictment cannot be challenged or overturned in district court. Because of this there is a higher rate of both dismissals after indictment and not guilty verdicts at trial, resulting in innocent people being detained pending trial. Requiring lawful, competent, and relevant evidence be presented in grand jury proceedings ensures that criminal indictments will be based on competent evidence that can be used at trial and ultimately result in higher conviction rates and reduce the number of unfounded accusations in our courts.<sup>1</sup> A system that allows a criminal target to present evidence for presentation to the grand jury that not only negates the proposed charges, but can also reduce the charges will result in less litigation during the course of the criminal case and reduce the coercive plea bargaining over-charging brings with it.

In light of the *Martinez* case, this statutory change is necessary to ensure that courts have authority to review the evidence to ensure it is competent as already required by law. Any resulting dismissal by a court would be “without prejudice,” meaning prosecutors are free to gather additional or better evidence and try again.

**ADDITIONAL INFO:** Both *DeLeon v. Hartley*, 2014-NMSC-005, and *Jones v. Murdock*, 145 N.M. 473, invest the courts with supervisory control over the grand jury. *Jones* goes on to find that the legislature has the authority to enact by statute laws allowing the target of a criminal grand jury to alert the grand jury of exculpatory evidence. HB190 would utilize the existing legislative authority to include evidence that could result in reduced criminal charges be presented to the grand jury so that the indictment would more closely reflect the facts and evidence in the case. Under the current procedure, any defense evidence is outlined in a *Bort-Jones* alert letter that is submitted to the prosecutor. If the prosecutor disagrees with the presentation of the defense evidence, the issue is presented to the grand jury judge who decides if the defense evidence will be submitted to the grand jury. HB190 would not change this process.

<b>Safer</b>	<b>Apolitical</b>	<b>Fiscally-Responsible</b>	<b>Evidence Based</b>	<b>Grade</b>
<p>Competent evidence in grand jury proceedings reduces wrongful incarceration and overcrowding in our county jails. Overcrowding in combination with a lack of adequate jail and medical staffing has resulted in severe illness and even death of people awaiting trial.<sup>ii</sup></p>	<p>In a push for more transparency the National Center for State Courts recommends reforms that provide more access to grand jury proceedings and even removing grand juries entirely in certain circumstances, substituting public preliminary hearings.<sup>iii</sup> In 2018, before COVID, the 2<sup>nd</sup> judicial district court announced it was slashing the number of grand juries impaneled in an effort to save money and move towards preliminary hearings which are criminal justice best practices.<sup>iv</sup></p>	<p>In the first 6 months of 2019 the district attorney in the 2<sup>nd</sup> judicial district secured convictions in only 60% of the cases filed.<sup>v</sup> 8,000 of those cases had felony charges. Requiring lawful, competent, evidence at grand jury proceedings would reduce the number of cases filed and ultimately the cost to the courts, prosecutors, and defenders.<sup>vi</sup> The average length of time a person charged with a felony is incarcerated in jail is 216 days before their case resolves.<sup>vii</sup> This comes at a substantial cost to New Mexico counties. Reducing indictments based on incompetent evidence ultimately reduces the costs associated with incarceration and litigation.</p>	<p>80% of cases in Bernalillo County are taken to grand jury proceedings and grand jury panels can hear as many as 25 cases a day.<sup>viii</sup> The proceedings are largely based on the hearsay testimony from one officer resulting in a 26% dismissal rate once the competent evidence is reviewed by prosecutors after the indictment was secured.<sup>ix</sup> Requiring competent evidence in grand jury proceedings would reduce the number of cases filed with the courts and the caseloads of both prosecutors and defenders by preventing cases from being indicted that are not supported by competent evidence.</p>	<p><b>A</b></p>

<sup>i</sup> *Rectifying Wrongful Convictions Through the Dormant Grand Jury Clause*, Colin Miller, *George Washington Law Review* Vol. 90:927, August 2022 - <https://www.gwlr.org/wp-content/uploads/2022/08/90-Geo.-Wash.-L.-Rev.-927.pdf>

<sup>ii</sup> *Woman Dies in Custody at MDC*, Albuquerque Journal Elise Kaplin, Jan. 23, 2023 - <https://www.abqjournal.com/2567097/woman-dies-in-custody-at-metropolitan-detention-center.html>

<sup>iii</sup> *Reforming the Grand Jury Indictment Process*, National Center for State Courts, 2021 - [https://www.grandjury.ncsc-jurystudies.org/\\_data/assets/pdf\\_file/0019/5851/grand-jury-report\\_rev-2021.pdf](https://www.grandjury.ncsc-jurystudies.org/_data/assets/pdf_file/0019/5851/grand-jury-report_rev-2021.pdf); Representative Brandon Ellington, Missouri House Resolution 17, 2016 Session - <https://themissouritimes.com/press-release-rep-ellington-proposes-abolishing-grand-juries-missouri/>.

<sup>iv</sup> *Court Plans Major Cuts to Grand Jury System*, Albuquerque Journal, Katy Barnitz, July 27, 2018 - <https://www.abqjournal.com/1202062/court-plans-major-cuts-to-grand-jury-system.html>

<sup>v</sup> *Transforming the Criminal Justice System: Impact Prosecution*, Raul Torrez, Second Judicial District Attorney, Jan. 2020 - <https://berncoda.com/wp-content/uploads/2021/08/Impact-Prosecution-FINALREPORT-2019-.pdf>

<sup>vi</sup> *Annual Report 2022*, New Mexico Judiciary - <https://www.nmcourts.gov/wp-content/uploads/2023/01/NM-Judiciary-Annual-Report-2022-2Jan2023-DIGITAL-VERSION.pdf>

<sup>vii</sup> *Length of Stay in Detention Facilities*, New Mexico Sentencing Commission Report, Jan. 2023

<sup>viii</sup> *Felony Caseflow Management in Bernalillo County*, New Mexico, National Center for State Courts, Nov. 2009 - <https://napco4courtleaders.org/wp-content/uploads/2012/05/Bernalillo-County-NCSC-Final-Report-11-24-09.pdf>

<sup>ix</sup> *Grand Jury System Under Fire*, Albuquerque Journal, Katy Barnitz, May 24, 2019 - <https://www.abqjournal.com/1319815/grand-jury-system-under-fire.html>