

HOUSE BILL NO. 460

INTRODUCED BY T. MILLETT, E. BYRNE, L. DEMING, S. GIST, C. HINKLE, J. HINKLE, G. KMETZ, T. MANZELLA, B. MITCHELL, A. REGIER, J. SCHILLINGER, T. SHARP, D. EMRICH, B. PHALEN, S. KLAKKEN

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 20, OF THE MONTANA CONSTITUTION TO PROVIDE A PROCESS IN WHICH A GRAND JURY MAY BE CALLED BY THE ELECTORS OF ANY COUNTY IN MONTANA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, in the spirit of Abraham Lincoln's quote: "We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution"; and

WHEREAS, the founding fathers deemed the grand jury and its power of the people to be so important that they carried the grand jury process to the United States Constitution through the Fifth Amendment in the Bill of Rights; and

WHEREAS, the grand jury by petition is the oldest and closest to the original intent of the founding fathers and was chiseled into the United States Constitution through the Bill of Rights as a restraining mechanism for possible abuse by institutional power; and

WHEREAS, the citizens' grand jury is the link in the chain that resists tyranny, because the citizens' grand jury's purpose was never to serve as a lapdog of power but as a watchdog for the people. The grand jury meets and deliberates in private to protect the jurors and the accused; and

WHEREAS, a Montana grand jury, consisting of 11 people, only investigates possible criminal activity and hands down an indictment if probable cause exists. They do not convict anyone; and

WHEREAS, the citizens of Montana have the fundamental right to a grand jury as provided in Article II, section 20, of the Montana Constitution; and

WHEREAS, in *United States v. Williams*, 504 U.S. 36 (1992), the United States Supreme Court discussed that the grand jury system is not in the body of the United States Constitution but is in the Fifth Amendment of the Bill of Rights, and it is like a fourth branch of government; and

WHEREAS, the grand jury is not constitutionally assigned to any of the other three branches of government and thus does not belong to any branch of government and is a constitutional fixture itself. It is not to be controlled or abused by any other branch of government, nor is it under the auspice, direction, or control of our Judicial Branch; and

WHEREAS, the grand jury is a protector of citizens against arbitrary and oppressive government actions; and

WHEREAS, the Montana grand jury is under the control of our Judicial Branch, because only a district court judge can authorize the impaneling of a grand jury, effectively withholding it from "we the people"; and

WHEREAS, the grand jury is a body of truth and power inferior to none but the Legislature itself; and

WHEREAS, we the people are guaranteed the constitutional right to a grand jury; and

WHEREAS, about half of the states require that a grand jury be used before an individual can be charged with a crime; and

WHEREAS, six states have a citizens' grand jury by petition: New Mexico, North Dakota, Nevada, Oklahoma, Nebraska, and Kansas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article II, section 20, of The Constitution of the State of Montana is amended to read:

"Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) (a) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned ~~only~~ at the discretion and order of the district judge.

(b) Whenever the greater of 100 plus one-half of one or five percent of the registered electors of a county have signed a petition to summon a grand jury and have submitted the petition signatures to the county election administrator, a grand jury shall be summoned and impaneled by the judge of the district court for the county receiving the petition.

(3) A grand jury so summoned and impaneled shall first consider any cause advanced by those who have brought and signed the petition, but the grand jury is the sole judge of its own duration and the breadth and depth of its own inquiry.

(4) An indictment brought by a grand jury shall be prosecuted by the county attorney for the county in which an alleged offense occurred, ~~regardless of prosecutorial discretion. A county attorney who fails to prosecute within 90 days after an indictment is handed down by the grand jury may be indicted for obstruction of justice and official misconduct.~~

(5) If a grand jury summoned under this section is unable to obtain the prosecution of an indictment by the county attorney of the county where the alleged offense occurred, the grand jury may compel prosecutorial assistance from the attorney general, ~~or the grand jury may retain a private prosecutor whose fees shall be a lawful claim against the county where the alleged offense occurred.~~

(6) A grand jury summoned under this section may, in addition to indictments, seek court orders to remedy situations under its investigation ~~and may hire counsel independent of the county attorney's office."~~

NEW SECTION. Section 2. Two-thirds vote required. Because [section 1] is a legislative proposal to amend the constitution, Article XIV, section 8, of the Montana constitution requires an affirmative roll call vote of two-thirds of all the members of the legislature, whether one or more bodies, for passage.

NEW SECTION. Section 3. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2026 by printing on the ballot the full title of [this act] and the following:

☐ YES on Constitutional Amendment ____.

☐ NO on Constitutional Amendment ____.

NEW SECTION. Section 4. Effective date. [This act] is effective on approval by the electorate.

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