MISSISSIPPI LEGISLATURE REGULAR SESSION 2011

By: Representative Warren

To: Judiciary A

HOUSE BILL NO. 331

AN ACT TO REENACT SECTIONS 13-7-1, 13-7-3, 13-7-5, 13-7-7, 13-7-9, 13-7-11, 13-7-13, 13-7-15, 13-7-17, 13-7-19, 13-7-21, 13-7-23, 13-7-25, 13-7-27, 13-7-29, 13-7-31, 13-7-33, 13-7-35, 13-7-37, 13-7-39, 13-7-41, 13-7-43, 13-7-45, 13-7-47 AND 13-7-49, MISSISSIPPI CODE OF 1972, WHICH CREATE THE STATE GRAND JURY ACT AND PROVIDE FOR THE OPERATION OF A STATE GRAND JURY; TO AMEND SECTION 99-11-3, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON VENUE FOR INDICTMENTS BY THE STATE GRAND JURY; TO AMEND SECTION 27, CHAPTER 553, LAWS OF 1993, AS AMENDED BY CHAPTER 382, LAWS OF 1998, AS AMENDED BY CHAPTER 480, LAWS OF 1999, AS AMENDED BY CHAPTER 471, LAWS OF 2002, AS AMENDED BY CHAPTER 506, LAWS OF 2005, TO EXTEND THE REPEALER ON THE STATE GRAND JURY ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 13-7-1, Mississippi Code of 1972, is reenacted as follows:

13-7-1. This chapter may be cited as the "State Grand Jury Act," and any state grand jury which may be convened as provided herein shall be known as "State Grand Jury of Mississippi."

SECTION 2. Section 13-7-3, Mississippi Code of 1972, is reenacted as follows:

13-7-3. For purposes of this chapter:

(a) The phrase "Attorney General or his designee" also includes:

(i) The Attorney General or his designees;

(ii) The Attorney General and his designee or designees.

(b) The term "impaneling judge" means any senior circuit court judge of any circuit court district who, upon petition by the Attorney General, impanels a state grand jury

under the provisions of this chapter and shall also include any successor to such judge as provided by law.

SECTION 3. Section 13-7-5, Mississippi Code of 1972, is reenacted as follows:

13-7-5. There is established a state grand jury system. Each state grand jury shall consist of twenty (20) persons who may be impaneled and who may meet at any suitable location within the state as designated by the impaneling judge. Fifteen (15) members of a state grand jury constitute a quorum.

SECTION 4. Section 13-7-7, Mississippi Code of 1972, is reenacted as follows:

13-7-7. (1) The jurisdiction of a state grand jury impaneled under this chapter extends throughout the state. The subject matter jurisdiction of a state grand jury in all cases is limited to offenses involving any and all conduct made unlawful by the Mississippi Uniform Controlled Substances Law or any other provision of law involving narcotics, dangerous drugs or controlled substances, or any crime arising out of or in connection with a crime involving narcotics, dangerous drugs or controlled substances, and crimes involving any attempt, aiding, abetting, solicitation or conspiracy to commit any of the aforementioned crimes if the crimes occur within more than one (1) circuit court district or have transpired or are transpiring or have significance in more than one (1) circuit court district of this state.

(2) Whenever the Attorney General considers it necessary, and normal investigative or prosecutorial procedures are not adequate, the Attorney General may petition in writing to the senior circuit court judge of any circuit court district in this state for an order impaneling a state grand jury. For the purposes of this chapter, such judge shall be referred to as the impaneling judge. The petition must allege the following:

(a) The type of offenses to be inquired into;

(b) That the state grand jury has jurisdiction to consider such matters;

(c) That the offenses to be inquired into have occurred within more than one (1) circuit court district or have transpired or are transpiring or have significance in more than one (1) circuit court district of this state;

(d) That the Attorney General has conferred with the Commissioner of Public Safety and the Director of the Mississippi Bureau of Narcotics and that each of such officials join in the petition; and

(e) That the Attorney General has conferred with the appropriate district attorney for each jurisdiction in which the crime or crimes are alleged to have occurred.

(3) The impaneling judge, after due consideration of the petition, may order the impanelment of a state grand jury in accordance with the petition for a term of twelve (12) calendar months. Upon petition by the Attorney General, the impaneling judge, by order, may extend the term of that state grand jury for a period of six (6) months, but the term of that state grand jury, including any extension thereof, shall not exceed two (2) years.

(4) The impaneling judge shall preside over the state grand jury until its discharge.

(5) The impaneling judge may discharge a state grand jury prior to the end of its original term or any extensions thereof, upon a determination that its business has been completed, or upon the request of the Attorney General.

(6) If, at any time within the original term of any state grand jury or any extension thereof, the impaneling judge determines that the state grand jury is not conducting investigative activity within its jurisdiction or proper investigative activity, the impaneling judge may limit the investigations so that the investigation conforms with the jurisdiction of the state grand jury and existing law or he may

discharge the state grand jury. An order issued pursuant to this subsection or under subsection (5) of this section shall not become effective less than ten (10) days after the date on which it is issued and actual notice given to the Attorney General and the foreman of the state grand jury, and may be appealed by the Attorney General to the Supreme Court. If an appeal from the order is made, the state grand jury, except as otherwise ordered by the Supreme Court, shall continue to exercise its powers pending disposition of the appeal.

SECTION 5. Section 13-7-9, Mississippi Code of 1972, is reenacted as follows:

13-7-9. A state grand jury may return indictments irrespective of the county or judicial district where the offense is committed. If an indictment is returned, it must be certified and transferred for prosecution to the county designated by the impaneling judge. The powers and duties of and the law applicable to county grand juries apply to the state grand jury, except when such powers and duties and applicable law are inconsistent with the provisions of this chapter.

SECTION 6. Section 13-7-11, Mississippi Code of 1972, is reenacted as follows:

13-7-11. The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports upon the direction of a state grand jury.

SECTION 7. Section 13-7-13, Mississippi Code of 1972, is reenacted as follows:

13-7-13. The impaneling judge shall appoint a circuit clerk who shall serve as the clerk of the state grand jury. The compensation of the state grand jury clerk shall be paid out of any available funds appropriated for that purpose.

SECTION 8. Section 13-7-15, Mississippi Code of 1972, is reenacted as follows:

13-7-15. After the impaneling judge orders a term for the state grand jury on petition of the Attorney General, the impaneling judge shall order that the circuit clerk for each county shall proceed to draw at random from the jury box as provided by Section 13-5-26, the name of one (1) voter of such county for each two thousand (2,000) voters or fraction thereof registered in such county and shall place these names on a list. The circuit clerk shall not disqualify or excuse any individual whose name is drawn. When the list is compiled, the clerk of the circuit court for each county shall forward the list to the clerk of the state grand jury. Upon receipt of all the lists from the clerks of the circuit courts, the clerk of the state grand jury shall place all the names so received upon a list which shall be known as the master list.

The impaneling judge shall order the clerk of the state grand jury to produce the master list and shall direct the random drawing of the names of one hundred (100) persons from the master list. The names drawn shall be given to the clerk of the state grand jury who shall cause each person drawn for service to be served with a summons either personally by the sheriff of the county where the juror resides or by mail, addressed to the juror at his usual residence, business or post office address, requiring him to report for state grand jury service at a specified time and place as designated by the impaneling judge. From the one hundred (100) persons summoned, a state grand jury shall be drawn for that term consisting of twenty (20) persons. State grand jurors must be drawn in the same manner as jurors are drawn for service on the county grand jury.

All qualified persons shall be liable to serve as state grand jurors, unless excused by the court for one (1) of the following causes:

(a) When the juror is ill, or when on account of serious illness in the juror's family, the presence of the juror is required at home;

(b) When the juror's attendance would cause a serious financial loss to the juror or to the juror's business; or

(c) When the juror is under an emergency, fairly equivalent to those mentioned in the foregoing paragraphs (a) and (b).

An excuse of illness under paragraph (a) may be made to the state grand jury clerk outside of open court by providing the clerk with either a certificate of a licensed physician or an affidavit of the juror, stating that the juror is ill or that there is a serious illness in the juror's family. The test of an excuse under paragraph (b) shall be whether, if the juror were incapacitated by illness or otherwise for a week, some other persons would be available or could reasonably be procured to carry on the business for the week, and the test of an excuse under paragraph (c) shall be such as to be the fair equivalent, under the circumstances of that prescribed under paragraph (b). In cases under paragraphs (b) and (c) the excuse must be made by the juror, in open court, under oath.

It shall be unlawful for any employer or other person to persuade or attempt to persuade any juror to avoid jury service, or to intimidate or to threaten any juror in that respect. So to do shall be deemed an interference with the administration of justice and a contempt of court and punishable as such.

Every citizen over sixty-five (65) years of age shall be exempt from service if he claims the privilege. No qualified juror shall be excluded because of such reason, but the same shall be a personal privilege to be claimed by any person selected for state grand jury duty. Any citizen over sixty-five (65) years of age may claim this personal privilege outside of open court by

providing the clerk of court with information that allows the clerk to determine the validity of the claim.

The state grand jurors shall be charged by the impaneling judge as to their authority and responsibility under the law and each juror shall be sworn pursuant to Section 13-5-45. Nothing in this section shall be construed as limiting the right of the Attorney General or his designee to request that a potential state grand juror be excused for cause. The jury selection process shall be conducted by the impaneling judge. Jurors of a state grand jury shall receive reimbursement for travel and mileage as provided for state employees by Section 25-3-41 and shall be paid per diem compensation in the amount provided by Section 25-3-69. All compensation and expenses for meals and lodging of state grand jurors shall be paid out of any available funds appropriated for that purpose.

SECTION 9. Section 13-7-17, Mississippi Code of 1972, is reenacted as follows:

13-7-17. The impaneling judge shall appoint one (1) of the jurors to be a foreman and another to be deputy foreman. During the absence of the foreman, the deputy foreman shall act as foreman. The foreman and deputy foreman shall be sworn pursuant to Section 13-5-45.

SECTION 10. Section 13-7-19, Mississippi Code of 1972, is reenacted as follows:

13-7-19. After the state grand jurors shall have been sworn and impaneled, no objections shall be raised by plea or otherwise, to the state grand jury, but the impaneling of the state grand jury shall be conclusive evidence of its competency and qualifications. However, any party interested may challenge the jury, except to the array, for fraud.

SECTION 11. Section 13-7-21, Mississippi Code of 1972, is reenacted as follows:

13-7-21. The clerk of the state grand jury, upon request of the Attorney General or his designee, shall issue subpoenas, or subpoenas duces tecum to compel individuals, documents or other materials to be brought from anywhere in the state or another state to a state grand jury. In addition, a state grand jury may proceed in the same manner as is provided for by law in relation to the issuance of subpoenas and subpoenas duces tecum; however, the provisions of such law shall not be considered a limitation upon this section, but shall be supplemental thereto. The subpoenas and subpoenas duces tecum may be for investigative purposes and for the retention of documents or other materials so subpoenaed for proper criminal proceedings. Any investigator employed by the Attorney General or any law enforcement officer with appropriate jurisdiction is empowered to serve such subpoenas and subpoenas duces tecum and receive such documents and other materials for return to a state grand jury. Any person violating a subpoena or subpoena duces tecum issued pursuant to this chapter, or who fails to fully answer all questions put to him before proceedings of the state grand jury whenever the response thereto is not privileged or otherwise protected by law, including the granting of immunity as authorized by this chapter, or any other law, may be punished by the impaneling judge for contempt provided the response is not privileged or otherwise protected by law. The Attorney General or his designee may petition the impaneling judge to compel compliance by the person alleged to have committed the violation or who has failed to answer. If the impaneling judge considers compliance is warranted, he may order compliance and may punish the individual for contempt, as provided in Section 9-1-17, where the compliance does not occur. The clerk of the state grand jury may also issue subpoenas and subpoenas duces tecum to compel individuals, documents or other materials to be brought from anywhere in the state to the trial of any indictment returned by a state grand jury or the trial of any

civil forfeiture action arising out of an investigation conducted by a state grand jury.

SECTION 12. Section 13-7-23, Mississippi Code of 1972, is reenacted as follows:

13-7-23. Once a state grand jury has entered into a term, the petition and order establishing and impaneling the state grand jury may be amended as often as necessary and appropriate so as to expand the areas of inquiry authorized by the order or to add additional areas of inquiry thereto, consistent with the provisions of this chapter. The procedures for amending this authority are the same as those for filing the original petition and order.

SECTION 13. Section 13-7-25, Mississippi Code of 1972, is reenacted as follows:

13-7-25. A court reporter shall record either stenographically or by use of an electronic recording device, all state grand jury proceedings except when the state grand jury is deliberating or voting. Subject to the limitations of Section 13-7-29 and any rule of court, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom and all books, papers, records and correspondence produced before the state grand jury shall remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

SECTION 14. Section 13-7-27, Mississippi Code of 1972, is reenacted as follows:

13-7-27. The foreman shall administer an oath or affirmation in the manner prescribed by law to any witness who testifies before a state grand jury.

SECTION 15. Section 13-7-29, Mississippi Code of 1972, is reenacted as follows:

13-7-29. (1) State grand jury proceedings are secret, and a state grand juror shall not disclose the nature or substance of the deliberations or vote of the state grand jury. The only persons who may be present in the state grand jury room when a state grand jury is in session, except for deliberations and voting, are the state grand jurors, the Attorney General or his designees, an interpreter if necessary and the witness testifying. A state grand juror, the Attorney General or his designees, any interpreter used and any person to whom disclosure is made pursuant to subsection (2)(b) of this section may not disclose the testimony of a witness examined before a state grand jury or other evidence received by it except when directed by a court for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court in any subsequent criminal proceedings;

(b) Determining whether the witness is guilty of perjury;

(c) Assisting local, state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their investigative jurisdiction;

(d) Providing the defendant the materials to which he is entitled pursuant to Section 13-7-25; or

(e) Complying with constitutional, statutory or other legal requirements or to further justice.

If the court orders disclosure of matters occurring before a state grand jury, the disclosure shall be made in that manner, at that time, and under those conditions as the court directs.

(2) In addition, disclosure of testimony of a witness examined before a state grand jury or other evidence received by it may be made without being directed by a court to:

(a) The Attorney General or his designees for use in the performance of their duties; or

(b) Those governmental personnel, including personnel of the state or its political subdivisions, as are considered necessary by the Attorney General or his designee to assist in the performance of their duties to enforce the criminal laws of the state; however, any person to whom matters are disclosed under this paragraph (b) shall not utilize the state grand jury material for purposes other than assisting the Attorney General or his designee in the performance of their duties to enforce the criminal laws of this state. The Attorney General or his designees shall promptly provide the impaneling judge the names of the persons to whom the disclosure has been made and shall certify that he has advised these persons of their obligations of secrecy under this section.

(3) Nothing in this section affects the attorney-client relationship. A client has the right to communicate to his attorney any testimony given by the client to a state grand jury, any matters involving the client discussed in the client's presence before a state grand jury and evidence involving the client received by a proffer to a state grand jury in the client's presence.

(4) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by a term of imprisonment not exceeding one (1) year, or by both such fine and imprisonment.

(5) State grand jurors, the Attorney General and his designee, any interpreter used and the clerk of the state grand

jury shall be sworn to secrecy and also may be punished for criminal contempt for violations of this section.

SECTION 16. Section 13-7-31, Mississippi Code of 1972, is reenacted as follows:

13-7-31. Except for the prosecution of cases arising from indictments issued by the state grand jury, the impaneling judge has jurisdiction to hear all matters arising from the proceedings of a state grand jury, including, but not limited to, matters related to the impanelment or removal of state grand jurors, the quashing of subpoenas and the punishment for contempt.

SECTION 17. Section 13-7-33, Mississippi Code of 1972, is reenacted as follows:

13-7-33. The Attorney General or his designee shall coordinate the scheduling of activities of any state grand jury.

SECTION 18. Section 13-7-35, Mississippi Code of 1972, is reenacted as follows:

13-7-35. (1) In order to return a "True Bill" of indictment, twelve (12) or more state grand jurors must find that probable cause exists for the indictment and vote in favor of the indictment. Upon indictment by a state grand jury, the indictment shall be returned to the impaneling judge. If the impaneling judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this chapter, he shall order the clerk of the state grand jury to certify the indictment and return the indictment to the county designated by the impaneling judge as the county in which the indictment shall be tried.

(2) Indictments returned by a state grand jury are properly triable in any county of the state where any of the alleged conduct occurred. The impaneling judge to whom the indictment is returned shall designate the county in which the indictment shall be tried. If a multicount indictment returned by a state grand jury is properly triable in a single proceeding as otherwise

provided by law, all counts may be tried in the county designated by the impaneling judge notwithstanding the fact that different counts may have occurred in more than one (1) county.

(3) In determining the venue for indictments returned by a state grand jury, the impaneling judge shall select the county in which the state and defendant may receive a fair trial before an impartial jury taking into consideration the totality of the circumstances of each case.

(4) When the indictment has been returned to the circuit clerk of the county designated by the impaneling judge, the capias shall be issued as otherwise provided by law. The indictment shall be kept secret until the defendant is in custody or has been released pending trial.

SECTION 19. Section 13-7-37, Mississippi Code of 1972, is reenacted as follows:

13-7-37. If any person asks to be excused from testifying before a state grand jury or from producing any books, papers, records, correspondence or other documents before a state grand jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty or forfeiture and such person, notwithstanding such ground, is directed by the impaneling judge to give the testimony or produce the evidence, he shall comply with this direction, but no testimony so given or evidence produced may be received against him in any criminal action, investigation or criminal proceeding. No individual testifying or producing evidence or documents is exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence given or produced is admissible against him upon any criminal action, criminal investigation or criminal proceeding concerning this perjury; however, any individual may execute, acknowledge and file a statement with the appropriate court expressly waiving immunity or privilege in respect to any testimony given or produced and

thereupon the testimony or evidence given or produced may be received or produced before any judge or justice, court tribunal, grand jury or otherwise, and if so received or produced, the individual is not entitled to any immunity or privilege on account of any testimony he may give or evidence produced.

SECTION 20. Section 13-7-39, Mississippi Code of 1972, is reenacted as follows:

13-7-39. Records, orders and subpoenas related to state grand jury proceedings shall be kept under seal to the extent and for the time that is necessary to prevent disclosure of matters occurring before a state grand jury.

SECTION 21. Section 13-7-41, Mississippi Code of 1972, is reenacted as follows:

13-7-41. The Attorney General shall make available suitable space for state grand juries to meet. The Mississippi Department of Public Safety and the Mississippi Bureau of Narcotics may provide such services as required by the Attorney General and the state grand juries.

SECTION 22. Section 13-7-43, Mississippi Code of 1972, is reenacted as follows:

13-7-43. The Supreme Court may promulgate rules as are necessary for the operation of the state grand jury system established by this chapter.

SECTION 23. Section 13-7-45, Mississippi Code of 1972, is reenacted as follows:

13-7-45. If any part of this chapter is declared invalid, unenforceable or unconstitutional by a court of competent jurisdiction, that part shall be severable from the remaining portions of this chapter, which portions shall remain in full force and effect as if the invalid, unenforceable or unconstitutional portion were omitted.

SECTION 24. Section 13-7-47, Mississippi Code of 1972, is reenacted as follows:

13-7-47. This chapter applies to offenses committed both before and after its effective date.

SECTION 25. Section 13-7-49, Mississippi Code of 1972, is reenacted as follows:

13-7-49. Nothing in this chapter shall be construed as amending, repealing or superseding any other law of this state governing the powers and duties of county grand jurors, district attorneys or law enforcement agencies or other officials with regard to their authority to investigate, indict or prosecute offenses that are prescribed by this chapter as within the jurisdiction of the state grand jury.

SECTION 26. Section 99-11-3, Mississippi Code of 1972, is amended as follows:

99-11-3. (1) The local jurisdiction of all offenses, unless otherwise provided by law, shall be in the county where committed. But, if on the trial the evidence makes it doubtful in which of several counties, including that in which the indictment or affidavit alleges the offense was committed, such doubt shall not avail to procure the acquittal of the defendant.

(2) The provisions of subsection (1) of this section shall not apply to indictments returned by a state grand jury. The venue of trials for indictments returned by a state grand jury shall be as provided by the State Grand Jury Act. This subsection shall stand repealed from and after July 1, 2014.

SECTION 27. Section 27, Chapter 553, Laws of 1993, as amended by Chapter 382, Laws of 1998, as amended by Chapter 480, Laws of 1999, as amended by Chapter 471, Laws of 2002, as amended by Chapter 506, Laws of 2005, is amended as follows:

Section 27. This act shall take effect and be in force from and after its passage, and, with the exception of Section 22, shall stand repealed from and after July 1, 2014.

SECTION 28. This act shall take effect and be in force from and after July 1, 2011.