Article 31.

The Grand Jury and Its Proceedings.

§ 15A-621. "Grand jury" defined.

A grand jury is a body consisting of not less than 12 nor more than 18 persons, impaneled by a superior court and constituting a part of such court. (1973, c. 1286, s. 1.)

§ 15A-622. Formation and organization of grand juries; other preliminary matters.

(a) The mode of selecting grand jurors and of drawing and impaneling grand jurors is governed by this Article and Chapter 9 of the General Statutes, Jurors. Challenges to the panel from which grand jurors were drawn are governed by the procedure in G.S. 15A-1211.

(b) To impanel a new grand jury, the presiding judge must direct that the names of all persons returned as jurors be separately placed in a container. The clerk must draw out the names of 18 persons to serve as grand jurors. Of these 18, the first nine drawn serve until the first session of court at which criminal cases are heard held in the county after the following January 1, and thereafter until their replacements are selected and sworn. The next nine serve until the first session of court at which criminal cases are heard held in the county after the following July 1, and thereafter until their replacements are selected and sworn. If this formula results in any term likely to be shorter than two months or longer than 15 months, the presiding judge impaneling the grand jury may modify the terms. Thereafter, beginning with the first session of superior court at which criminal cases are heard held in the county following January 1 and July 1 of each year, nine new grand jurors must be selected in the manner provided above to replace the jurors whose terms have expired. All new grand jurors so selected serve until the first session of court at which criminal cases are heard held after January 1 or July 1 which most nearly results in a 12-month term, and thereafter until their replacements are selected and sworn. If a vacancy occurs in the membership of the grand jury, the superior court judge next convening the jury or next holding a session of court at which criminal cases are heard in the county may order that a new juror be drawn in the manner provided above to fill the vacancy.

The senior resident superior court judge of the district may impanel a second grand jury in any county of the district to serve concurrently with the first. The second grand jury shall be impaneled as provided in the first paragraph of this subsection. The court shall continue to have two grand juries until the senior resident superior court judge orders the second grand jury to terminate.

In any county the senior resident superior court judge, if he finds that grand jury service is placing a disproportionate burden on grand jurors and their employers, may fix the term of service of a grand juror at six months rather than 12 months. In doing so, he shall prescribe procedures, consistent with this section, for replacement of half of the jurors of the grand jury or grand juries approximately every three months.

(c) Neither the grand jury panel nor any individual grand juror may be challenged, but a superior court judge may:

(1) At any time before new grand jurors are sworn, discharge them, or discharge the grand jury, and cause new grand jurors or a new grand jury to be drawn if he finds that jurors have not been selected in accordance with law or that the grand jury is illegally constituted; or

(2) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service, incapable of performing his duties, or guilty of misconduct in the performance of his duties so as to impair the proper functioning of the grand jury.

(d) The presiding judge may excuse a grand juror from service of the balance of his term, upon his own motion or upon the juror's request for good cause shown. The foreman may excuse individual jurors from attending particular sessions of the grand jury, except that he may not excuse more than two jurors for any one session.

(e) After the impaneling of a new grand jury, or the impaneling of nine new jurors under the terms of this section, the presiding judge must appoint one of the grand jurors as foreman and may appoint another to act as foreman during any absence or disability of the foreman. Unless removed for cause by a superior court judge, the foreman serves until his successor is appointed and sworn.

(f) The foreman and other new grand jurors must take the oath prescribed in G.S. 11-11. After new grand jurors have been sworn, the presiding judge may give the grand jurors written or oral instructions relating to the performance of their duties. At subsequent sessions of court, the presiding judge is not required to give any additional instructions to the grand jurors.

(g) At any time when a grand jury is in recess, a superior court judge may, upon application of the prosecutor or upon his own motion, order the grand jury reconvened for the purpose of dealing with a matter requiring grand jury action.

(h) A written petition for convening of grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

(1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or

permanently, and in the latter event the court may impanel another person in place of the juror excused.

(i) An investigative grand jury may be convened pursuant to subsection (h) of this section if the petition alleges the commission of, attempt to commit or solicitation to commit, or a conspiracy to commit a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).

(j) Any grand juror who serves the full term of service under subsection (b) or subsection (h) of this section shall not be required to serve again as a grand juror or as a juror for a period of six years. (1779, c. 157, s. 11, P.R.; R.C., c. 31, s. 33; 1879, c. 12; Code, ss. 404, 1742; Rev., ss. 1969, 1971; C.S., ss. 2333, 2336; 1929, c. 228; 1967, c. 218, s. 1; 1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1977, c. 711, s. 24; 1979, c. 177, s. 1; 1981, c. 440, s. 1; 1985 (Reg. Sess., 1986), c. 843, ss. 2, 6; 1987 (Reg. Sess., 1988), c. 1040, ss. 1, 3; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, ss. 1, 3; 1995, c. 362, s. 1; 2013-148, s. 3; 2013-368, s. 21.)

§ 15A-623. Grand jury proceedings and operation in general.

(a) The finding of an indictment, the return of a presentment, and every other affirmative official action or decision of the grand jury requires the concurrence of at least 12 members of the grand jury.

(b) The foreman presides over all hearings and has the power to administer oaths or affirmations to all witnesses.

(c) The foreman must indicate on each bill of indictment or presentment the witness or witnesses sworn and examined before the grand jury. Failure to comply with this provision does not vitiate a bill of indictment or presentment.

(d) During the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to a witness being examined, may, as the occasion requires, also be present:

(1) An interpreter, if needed.

(2) A law-enforcement officer holding a witness in custody.

Any person other than a witness who is permitted in the grand jury room must first take an oath before the grand jury that he will keep secret all matters before it within his knowledge.

(e) Grand jury proceedings are secret and, except as expressly provided in this Article, members of the grand jury and all persons present during its sessions shall keep its secrets and refrain from disclosing anything which transpires during any of its sessions.

(f) The presiding judge may direct that a bill of indictment be kept secret until the defendant is arrested or appears before the court. The clerk must seal the bill of indictment and no person including a witness may disclose the finding of the bill of indictment, or the proceedings leading to the finding, except when necessary for the issuance and execution of an order of arrest.

(g) Any grand juror or other person authorized to attend sessions of the grand jury and bound to keep its secrets who discloses, other than to his attorney, matters occurring before the grand jury other than in accordance with the provisions of this section is in contempt of court and subject to proceedings in accordance with law.

(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a court reporter shall be present and record the examination of witnesses. The record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony from the witness, he may grant use immunity to the witness. The grant of use immunity shall be given to the witness in writing by the prosecutor

and shall be signed by the prosecutor. The written grant of use immunity shall also be read into the record by the prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury room to consult with his counsel at reasonable intervals and for a reasonable period of time upon the request of the witness. Notwithstanding subsection (e) of this section, the record of the examination of witnesses shall be made available to the examining prosecutor, and he may disclose contents of the record to other investigative or law-enforcement officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper performance of his official duties. The record of the examination of a witness may be used in a trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings convened pursuant to this act may be made upon written order of a superior court judge if the judge determines disclosure is essential:

(1) To prosecute a witness who appeared before the grand jury for contempt or perjury; or

(2) To protect a defendant's constitutional rights or statutory rights to discovery pursuant to G.S. 15A-903.

Upon the convening of the investigative grand jury pursuant to approval by the three-judge panel, the district attorney shall subpoena the witnesses. The subpoena shall be served by the investigative grand jury officer, who shall be appointed by the court. The name of the person subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that information. The presiding superior court judge shall hear any matter concerning the investigative grand jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter for the investigative grand jury shall be present and record and transcribe the in camera proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an investigative grand jury has completed its investigation of the crimes alleged in the petition, the investigative functions of the grand jury shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina Supreme Court. (1973, c. 1286, s. 1; 1985 (Reg. Sess., 1986), c. 843, ss. 3, 6; 1987 (Reg. Sess., 1988), c. 1040, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, ss. 2, 3.)

§ 15A-624. Grand jury the judge of facts; judge the source of legal advice.

(a) The grand jury is the exclusive judge of the facts with respect to any matter before it.

(b) The legal advisor of the grand jury is the presiding or convening judge. (1973, c. 1286, s. 1.)

§ 15A-625. Reserved for future codification purposes.

§ 15A-626. Who may call witnesses before grand jury; no right to appear without consent of prosecutor or judge.

(a) Except as provided in this section, no person has a right to call a witness or appear as a witness in a grand jury proceeding.

(b) In proceedings upon bills of indictment submitted by the prosecutor to the grand jury, the clerk must call as witnesses the persons whose names are listed on the bills by the prosecutor. If

the grand jury desires to hear any witness not named on the bill under consideration, it must through its foreman request the prosecutor to call the witness. The prosecutor in his discretion may call, or refuse to call, the witness.

(c) In considering any matter before it a grand jury may swear and hear the testimony of a member of the grand jury.

(d) Any person not called as a witness who desires to testify before the grand jury concerning a criminal matter which may properly be considered by the grand jury must apply to the district attorney or to a superior court judge. The judge or the district attorney in his discretion may call the witness to appear before the grand jury.

(e) An official who is required or authorized to call a witness before the grand jury does so by issuing a subpoena for the witness or by causing one to be issued. If the official is assured that the witness will appear when requested without issuance of a subpoena, he may call the witness simply by notifying him of the time and place his presence is requested before the grand jury. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-627. Submission of bill of indictment to grand jury by prosecutor.

(a) When a defendant has been bound over for trial in the superior court upon any charge in the original jurisdiction of such court, the prosecutor, unless he dismisses the charge under the terms of Article 50 of this Chapter, Voluntary Dismissal by the State, or proceeds upon a bill of information, must submit a bill of indictment charging the offense to the grand jury for its consideration.

(b) A prosecutor may submit a bill of indictment charging an offense within the original jurisdiction of the superior court. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-628. Functions of grand jury; record to be kept by clerk.

(a) A grand jury:

(1) Must return a bill submitted to it by the prosecutor as a true bill of indictment if it finds from the evidence probable cause for the charge made.

(2) Must return a bill submitted to it by the prosecutor as not a true bill of indictment if it fails to find probable cause for the charge made. Upon returning a bill of indictment as not a true bill, the grand jury may request the prosecutor to submit a bill of indictment as to a lesser included or related offense.

(3) May return the bill to the court with an indication that the grand jury has not been able to act upon it because of the unavailability of witnesses.

(4) May investigate any offense as to which no bill of indictment has been submitted to it by the prosecutor and issue a presentment accusing a named person or named persons with one or more criminal offenses if it has found probable cause for the charges made. An investigation may be initiated upon the concurrence of 12 members of the grand jury itself or upon the request of the presiding or convening judge or the prosecutor.

(5) Must inspect the jail and may inspect other county offices or agencies and must report the results of its inspections to the court.

(b) In proceeding under subsection (a), the grand jury may consider any offense which may be prosecuted in the courts of the county, or in the courts of the superior court district or set of districts as defined in G.S. 7A-41.1 when there has been a waiver of venue in accordance with Article 3 of this Chapter, Venue.

(c) Bills of indictment submitted by the prosecutor to the grand jury, whether found to be true bills or not, must be returned by the foreman of the grand jury to the presiding judge in open court. Presentments must also be returned by the foreman of the grand jury to the presiding judge in open court.

(d) The clerk must keep a permanent record of all matters returned by the grand jury to the judge under the provisions of this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1987 (Reg. Sess., 1988), c. 1037, s. 59.)

§ 15A-629. Procedure upon finding of not a true bill; release of defendant, etc.; institution of new charge.

(a) Upon the return of a bill of indictment as not a true bill, the presiding judge must immediately examine the case records to determine if the defendant is in custody or subject to bail or conditions of pretrial release. If so, except as provided in subsection (b), the judge must immediately order release from custody, exoneration of bail, or release from conditions of pretrial release, as the case may be.

(b) Upon the return of a bill of indictment as not a true bill but with a request that the prosecutor submit a bill of indictment to a lesser included or related offense, the judge may defer the action required in subsection (a) for a reasonable period, not to extend past the end of that session of superior court, to allow the institution of the new charge. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§ 15A-630. Notice to defendant of true bill of indictment.

Upon the return of a bill of indictment as a true bill the presiding judge must immediately cause notice of the indictment to be mailed or otherwise given to the defendant unless he is then represented by counsel of record. The notice must inform the defendant of the time limitations upon his right to discovery under Article 48 of this Chapter, Discovery in the Superior Court, and a copy of the indictment must be attached to the notice. If the judge directs that the indictment be sealed as provided in G.S. 15A-623(f), he may defer the giving of notice under this section for a reasonable length of time. (1973, c. 1286, s. 1; 1975, 2nd Sess., c. 983, s. 143.)

§ 15A-631. Grand jury venue.

In the General Court of Justice, the place for returning a presentment or indictment is a matter of venue and not jurisdiction. A grand jury shall have venue to present or indict in any case where the county in which it is sitting has venue for trial pursuant to the laws relating to trial venue. (1985, c. 553, s. 1.)

§§ 15A-632 through 15A-640. Reserved for future codification purposes.