

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS65194-LH-1A (09/22)

Short Title: Amend Investigative Grand Jury Authority. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY INVESTIGATE CERTAIN ALLEGED CRIMES IN ADDITION TO THOSE RELATING TO CONTROLLED SUBSTANCES AND TO AMEND THE PROCEDURE FOR CONVENING AN INVESTIGATIVE GRAND JURY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-622(h) is recodified as G.S. 15A-632(c).

SECTION 2. G.S. 15A-623(h) is recodified as G.S. 15A-632(d).

SECTION 3. G.S. 15A-632, as recodified by this act, reads as rewritten:

"§ 15A-632. Investigative grand jury.

(a) Allegations Subject to Investigation. – An investigative grand jury may be convened in accordance with this section to investigate an allegation regarding the commission or conspiracy of any of the following:

- (1) The misdemeanor or felony offense of obstruction of justice (Common law offense).
- (2) A violation of G.S. 14-7 (Murder) or G.S. 14-18 (Manslaughter).
- (3) A violation of G.S. 14-90 (Embezzlement), G.S. 14-100 (False pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery).
- (4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14 through G.S. 14-190.19 (Relating to the distribution of certain materials to minors, the use of a minor for obscene purposes, sexual exploitation of a minor, and the promotion of or participation in prostitution of a minor).
- (5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of perjury).
- (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to perjury, bribery of officials and jurors,

1 obstructing justice, and secret listening), G.S. 14-228 (Relating to
2 buying and selling of offices), G.S. 14-230 (Failing to discharge
3 duties), G.S. 14-234 (Conflict of interest), or G.S. 14-234.1 (Misuse of
4 confidential information).

5 (7) A violation of G.S. 14-254 (Corporate malfeasance).

6 (8) A violation of Article 37 of Chapter 14 of the General Statutes
7 (Relating to lotteries, gaming, bingo, and raffles).

8 (9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled
9 substances and continuing criminal enterprises).

10 (10) A violation of G.S. 136-13 (Malfeasance at Department of
11 Transportation), G.S. 136-13.1 (Use of position to influence elections
12 or political action), G.S. 136-13.2 (Falsifying highway inspection
13 reports), G.S. 136-14 (Profiting from official position at Department of
14 Transportation; misuse of confidential information by Board
15 members).

16 (11) A violation of Article 20, 22, or 22A of Chapter 163 of the General
17 Statutes (Relating to absentee ballots, corrupt practices and other
18 offenses against the elective franchise, and regulation of contributions
19 and expenditures in political campaigns).

20 (b) Appointment of Permanent Three-Judge Panel to Determine Whether to
21 Convene Investigative Grand Jury. – Beginning July 1, 2005, and every two years
22 thereafter, the Chief Justice shall appoint a permanent panel of three superior court
23 judges to determine whether to order an investigative grand jury convened under this
24 section. The panel of judges shall be appointed to serve for a term of two years. The
25 Chief Justice shall fill any vacancy that occurs on the panel before the two-year term
26 ends.

27 (c) Procedure For Determining Whether to Convene Investigative Grand Jury. –
28 A written petition for convening of an investigative grand jury under this section may be
29 filed by the district attorney, the district attorney's designated assistant, or a special
30 prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at
31 least three members of the North Carolina Conference of District Attorneys, and with
32 the concurrence of the Attorney General, G.S. 114-11.6 with the Clerk of the North
33 Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to
34 determine whether to order the grand jury convened. The petition shall be forwarded to
35 the Chief Justice who shall refer the petition to the panel of three judges established
36 under subsection (b) of this section to determine whether to order the grand jury
37 convened. A grand jury
38 An investigative grand jury under this section may be convened
39 if the three-judge panel determines that all of the following:

40 (1) The petition alleges the commission of or a conspiracy to commit a
41 violation of G.S. 90-95(h) or G.S. 90-95.1, any of the offenses listed in
42 subsection (a) of this section, any part of which violation or conspiracy
43 occurred in the county where the proposed investigative grand jury
44 sits, sits or will sit, and that persons named in the petition have
knowledge related to the identity of the perpetrators of those crimes

1 but will not divulge that knowledge voluntarily or that such persons
2 request that they be allowed to testify before the ~~grand jury; and~~grand
3 jury.

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

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

18 A grand jury authorized by this ~~subsection~~section may be convened from an
19 existing grand jury or grand juries authorized by ~~subsection (b) of this~~
20 ~~section~~G.S. 15A-622(b) or may be convened as an additional grand jury to an existing
21 grand jury or grand juries. Notwithstanding ~~subsection (b) of this section,~~G.S.
22 15A-622(b), grand jurors impaneled pursuant to this ~~subsection~~section shall serve for a
23 period of 12 months, and, if an additional grand jury is convened, 18 persons shall be
24 selected to constitute that grand jury. At any time for cause shown, the presiding
25 superior court judge may excuse a juror temporarily or permanently, and in the latter
26 event the court may impanel another person in place of the juror excused.

27 (d) Investigative Grand Jury Proceedings and Operations. – ~~If a grand jury an~~
28 ~~investigative grand jury is~~ convened pursuant to ~~G.S. 15A-622(h),~~this section,
29 notwithstanding ~~subsection (d) of this section,~~G.S. 15A-623(d), a prosecutor shall be
30 present to examine witnesses, and a court reporter shall be present and record the
31 examination of witnesses. The record shall be transcribed. If the prosecutor determines
32 that it is necessary to compel testimony from the witness, ~~he~~the prosecutor may grant
33 use immunity to the witness. The grant of use immunity shall be given to the witness in
34 writing by the prosecutor and shall be signed by the prosecutor. The written grant of use
35 immunity shall also be read into the record by the prosecutor and shall include an
36 explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the
37 right to leave the grand jury room to consult with ~~his~~the witness's counsel at reasonable
38 intervals and for a reasonable period of time upon the request of the witness.
39 Notwithstanding ~~subsection (e) of this section,~~G.S. 15A-623(e), the record of the
40 examination of witnesses shall be made available to the examining prosecutor, and ~~he~~
41 the prosecutor may disclose contents of the record to other investigative or
42 law-enforcement officers, the witness or ~~his~~the witness's attorney to the extent that the
43 disclosure is appropriate to the proper performance of ~~his~~the prosecutor's official
44 duties. The record of the examination of a witness may be used in a trial to the extent

1 that it is relevant and otherwise admissible. Further disclosure of grand jury proceedings
2 convened pursuant to this act may be made upon written order of a superior court judge
3 if the judge determines disclosure is essential:

- 4 (1) To prosecute a witness who appeared before the grand jury for
5 contempt or perjury; or
- 6 (2) To protect a defendant's constitutional rights or statutory rights to
7 discovery pursuant to G.S. 15A-903.

8 Upon the convening of the investigative grand jury pursuant to ~~approval by the~~
9 ~~three judge panel,~~this section, the district attorney shall subpoena the witnesses. The
10 subpoena shall be served by the investigative grand jury officer, who shall be appointed
11 by the court. The name of the person subpoenaed and the issuance and service of the
12 subpoena shall not be disclosed, except that a witness so subpoenaed may divulge that
13 information. The presiding superior court judge shall hear any matter concerning the
14 investigative grand jury in camera to the extent necessary to prevent disclosure of its
15 existence. The court reporter for the investigative grand jury shall be present and record
16 and transcribe the in camera proceeding. The transcription of any in camera proceeding
17 and a copy of all subpoenas and other process shall be returned to the Chief Justice or to
18 such member of the three-judge panel as the Chief Justice may designate, to be filed
19 with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be
20 subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an
21 investigative grand jury has completed its investigation of the crimes alleged in the
22 petition, the investigative functions of the grand jury shall be dissolved and such
23 investigation shall cease. The District Attorney shall file a notice of dissolution of the
24 investigative functions of the grand jury with the Clerk of the North Carolina Supreme
25 Court."

26 **SECTION 3.** This act becomes effective December 1, 2005.