

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 745

Short Title: Amend Investigative Grand Jury Authority.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

March 22, 2005

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, obstructing justice, and secret listening), G.S. 14-228 (Relating to buying and selling of offices), G.S. 14-230 (Failing to discharge

1 duties), G.S. 14-234 (Conflict of interest), or G.S. 14-234.1 (Misuse of
2 confidential information).

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

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

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

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

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

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

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

37 (1) The petition alleges the commission of or a conspiracy to commit a
38 violation of G.S. 90-95(h) or G.S. 90-95.1, any of the offenses listed in
39 subsection (a) of this section, any part of which violation or conspiracy
40 occurred in the county where the proposed investigative grand jury
41 sits, sits or will sit, and that persons named in the petition have
42 knowledge related to the identity of the perpetrators of those crimes
43 but will not divulge that knowledge voluntarily or that such persons

1 request that they be allowed to testify before the ~~grand jury; and~~grand
2 jury.

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

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

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

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

1 convened pursuant to this act may be made upon written order of a superior court judge
2 if the judge determines disclosure is essential:

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

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

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