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HOUSE BILL 242
Committee Substitute Favorable 3/24/15
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Short Title: White Collar Investigation.

(Public)

Sponsors:

Referred to:

March 17, 2015

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF CRIMES FOR WHICH AN INVESTIGATIVE GRAND JURY MAY BE CONVENED AND TO CLARIFY THAT RECORDS GATHERED BY AN INVESTIGATIVE GRAND JURY ARE PART OF THE FILE OF THE PROSECUTOR'S OFFICE AND SUBJECT TO DISCLOSURE TO THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-622 reads as rewritten:

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

...

(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 of the crimes listed in subsection (i) of this section,~~ 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



1 receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine
2 whether the grand jury should be convened as an investigative grand jury.

3 A grand jury authorized by this subsection may be convened from an existing grand jury or
4 grand juries authorized by subsection (b) of this section or may be convened as an additional
5 grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this
6 section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12
7 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute
8 that grand jury. At any time for cause shown, the presiding superior court judge may excuse a
9 juror temporarily or permanently, and in the latter event the court may impanel another person
10 in place of the juror excused.

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

15 (1) A violation of G.S. 90-95(h) or G.S. 90-95.1.

16 (2) A violation of Article 29 or 30 of Chapter 14 of the General Statutes
17 (relating to bribery and obstructing justice), G.S. 14-228 (buying and selling
18 of offices), or G.S. 14-234 (public officers or employees benefiting from
19 public contracts).

20 (3) A violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary
21 servitude), or G.S. 14-43.13 (sexual servitude).

22 (j) Any grand juror who serves the full term of service under subsection (b) or
23 subsection (h) of this section shall not be required to serve again as a grand juror or as a juror
24 for a period of six years."

25 **SECTION 2.** G.S. 15A-623(h) reads as rewritten:

26 "(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding subsection
27 (d) of this section, a prosecutor shall be present to examine witnesses, and a court reporter shall
28 be present and record the examination of witnesses. The record shall be transcribed. If the
29 prosecutor determines that it is necessary to compel testimony from the witness, he may grant
30 use immunity to the witness. The grant of use immunity shall be given to the witness in writing
31 by the prosecutor and shall be signed by the prosecutor. The written grant of use immunity
32 shall also be read into the record by the prosecutor and shall include an explanation of use
33 immunity as provided in G.S. 15A-1051. A witness shall have the right to leave the grand jury
34 room to consult with his counsel at reasonable intervals and for a reasonable period of time
35 upon the request of the witness. Notwithstanding subsection (e) of this section, the ~~record~~
36 records gathered in the course of the grand jury investigation and the record of the examination
37 of witnesses shall be made available to the examining prosecutor, and ~~he may~~ shall become part
38 of the file of the prosecutor's office as those terms are defined by G.S. 15A-903(a)(1). The
39 prosecutor may disclose contents of the record to other investigative or law-enforcement
40 officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper
41 performance of his official duties. The record of the examination of a witness may be used in a
42 trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury
43 proceedings convened pursuant to this act may be made upon written order of a superior court
44 judge if the judge determines disclosure is essential:

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

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

49 Upon the convening of the investigative grand jury pursuant to approval by the three-judge
50 panel, the district attorney shall subpoena the witnesses. The subpoena shall be served by the
51 investigative grand jury officer, who shall be appointed by the court. The name of the person

1 subpoenaed and the issuance and service of the subpoena shall not be disclosed, except that a
2 witness so subpoenaed may divulge that information. The presiding superior court judge shall
3 hear any matter concerning the investigative grand jury in camera to the extent necessary to
4 prevent disclosure of its existence. The court reporter for the investigative grand jury shall be
5 present and record and transcribe the in camera proceeding. The transcription of any in camera
6 proceeding and a copy of all subpoenas and other process shall be returned to the Chief Justice
7 or to such member of the three-judge panel as the Chief Justice may designate, to be filed with
8 the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be subject to the
9 provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an investigative grand jury
10 has completed its investigation of the crimes alleged in the petition, the investigative functions
11 of the grand jury shall be dissolved and such investigation shall cease. The District Attorney
12 shall file a notice of dissolution of the investigative functions of the grand jury with the Clerk
13 of the North Carolina Supreme Court."

14 **SECTION 3.** This act becomes effective October 1, 2015.