

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 349

Short Title: Grand Jury/Children & Obscenity.

(Public)

Sponsors: Senators Simpson; Carpenter and Hardin.

Referred to: Judiciary I.

March 6, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CONVENING OF A GRAND JURY TO INVESTIGATE CRIMES INVOLVING CHILDREN IN THE PRODUCTION OR DISSEMINATION OF OBSCENITY.

The General Assembly of North Carolina enacts:

Section 1. G. S. 15A-622(h) reads as rewritten:

"(h) A written petition for convening of grand jury under this section may be filed by the district attorney, 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 either (i) the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, or (ii) the commission of a crime that involves a child less than 16 years of age in the production or dissemination of obscenity as defined in G.S. 14-190.1, including a violation of G.S. 14-190.6, 14-190.7, 14-190.8, 14-190.14, 14-190.15, 14-190.16, and 14-190.17, and 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

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

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

15          Sec. 2. G.S. 15A-623(h) reads as rewritten:

16          "(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding  
17          subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a  
18          court reporter shall be present and record the examination of witnesses. The record  
19          shall be transcribed. If the prosecutor determines that it is necessary to compel  
20          testimony from the witness, he may grant use immunity to the witness. The grant of use  
21          immunity shall be given to the witness in writing by the prosecutor and shall be signed  
22          by the prosecutor. The written grant of use immunity shall also be read into the record  
23          by the prosecutor and shall include an explanation of use immunity as provided in G.S.  
24          15A-1051. A witness shall have the right to leave the grand jury room to consult with  
25          his counsel at reasonable intervals and for a reasonable period of time upon the request  
26          of the witness. Notwithstanding subsection (e) of this section, the record of the  
27          examination of witnesses shall be made available to the examining prosecutor, and he  
28          may disclose contents of the record to other investigative or law-enforcement officers,  
29          the witness or his attorney to the extent that the disclosure is appropriate to the proper  
30          performance of his official duties. The record of the examination of a witness may be  
31          used in a trial to corroborate or impeach that witness to the extent that it is relevant and  
32          otherwise admissible. Further disclosure of grand jury proceedings convened pursuant  
33          to this act may be made upon written order of a superior court judge if the judge  
34          determines disclosure is essential:

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

39          Upon the convening of the investigative grand jury pursuant to approval by the  
40          three-judge panel, the district attorney shall subpoena the ~~witnesses~~ witnesses or  
41          documents. The subpoena shall be served by the investigative grand jury officer, who  
42          shall be appointed by the court. The name of the person subpoenaed and the issuance  
43          and service of the subpoena shall not be disclosed, except that a witness so subpoenaed  
44          may divulge that information. A copy of all subpoenas and other process shall be

1 returned to the Chief Justice or to such member of the three-judge panel as the Chief  
2 Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court.  
3 The subpoena shall otherwise be subject to the provisions of ~~G.S. 15A-801~~ G.S. 15A-  
4 801, G.S. 15A-802, and Article 43 of Chapter 15A. When an investigative grand jury  
5 has completed its investigation of the crimes alleged in the petition, the investigative  
6 functions of the grand jury shall be dissolved and such investigation shall cease. The  
7 District Attorney shall file a notice of dissolution of the investigative functions of the  
8 grand jury with the Clerk of the North Carolina Supreme Court."

9           Sec. 3. This act shall become effective October 1, 1989.