

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS55042-LH-14A (11/29)

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.** Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 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 of or conspiracy to commit any of the following:

- (1) The misdemeanor or felony offense of obstruction of justice (Common law offense).
- (2) A violation of G.S. 14-17 (Murder) or G.S. 14-18 (Manslaughter).
- (3) A violation of G.S. 14-90 (Embezzlement of property received by virtue of office or employment), G.S. 14-100 (Obtaining property by false pretenses), G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery of notes, checks, and other securities; counterfeiting of instruments).
- (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 dissemination 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).

- 1           (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General  
2 Statutes (Relating to bribery, obstructing justice, and secret listening),  
3 G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to  
4 discharge duties), G.S. 14-234 (Public officers or employees benefiting  
5 from public contracts), or G.S. 14-234.1 (Misuse of confidential  
6 information).
- 7           (7) A violation of G.S. 14-254 (Malfeasance of corporation officers and  
8 agents).
- 9           (8) A violation of Article 37 of Chapter 14 of the General Statutes  
10 (Relating to lotteries, gaming, bingo, and raffles).
- 11           (9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled  
12 substances and continuing criminal enterprises).
- 13           (10) A violation of G.S. 136-13 (Malfeasance of officers and employees of  
14 Department of Transportation, members of Board of Transportation,  
15 contractors, and others), G.S. 136-13.1 (Use of position to influence  
16 elections or political action), G.S. 136-13.2 (Falsifying highway  
17 inspection reports), G.S. 136-14 (Members not eligible for other  
18 employment with Department; no sales to Department by employees;  
19 members not to sell or trade property with Department; profiting from  
20 official position; misuse of confidential information by Board  
21 members).
- 22           (11) A violation of Article 20, 22, or 22A of Chapter 163 of the General  
23 Statutes (Relating to absentee ballots, corrupt practices and other  
24 offenses against the elective franchise, and regulation of contributions  
25 and expenditures in political campaigns).

26       (b) Appointment of Permanent Three-Judge Panel to Determine Whether to  
27 Convene Investigative Grand Jury. – Beginning December 1, 2007, and every two years  
28 thereafter, the Chief Justice shall appoint a permanent panel of three superior court  
29 judges to determine whether to order an investigative grand jury convened under this  
30 section. The panel of judges shall be appointed to serve for a term of two years. The  
31 Chief Justice shall fill any vacancy that occurs on the panel before the two-year term  
32 ends.

33       (c) Procedure for Determining Whether to Convene Investigative Grand Jury. –  
34 A written petition for convening of an investigative grand jury under this section may be  
35 filed by the district attorney, the district attorney's designated assistant, or a special  
36 prosecutor requested pursuant to G.S. 114-11.6 with the Clerk of the North Carolina  
37 Supreme Court. The petition shall be forwarded to the Chief Justice who shall refer the  
38 petition to the panel of three judges established under subsection (b) of this section to  
39 determine whether to order the grand jury convened. An investigative grand jury under  
40 this section may be convened if the three-judge panel determines all of the following:

- 41           (1) The petition alleges the commission of or a conspiracy to commit any  
42 of the offenses listed in subsection (a) of this section, any part of  
43 which violation or conspiracy occurred in the county where the  
44 proposed investigative grand jury sits or will sit, and that persons

1 named in the petition have knowledge related to the identity of the  
2 perpetrators of those crimes but will not divulge that knowledge  
3 voluntarily or that such persons request that they be allowed to testify  
4 before the grand jury.

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

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

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

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

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

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

23           **SECTION 2.** G.S. 15A-622(h) is repealed.

24           **SECTION 3.** G.S. 15A-623(h) is repealed.

25           **SECTION 4.** This act becomes effective December 1, 2007.