

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 122

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

Sponsors: Senators Rand; and Jones.

Referred to: Judiciary I (Civil).

February 13, 2007

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).
- (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes (Relating to bribery, obstructing justice, and secret listening), G.S. 14-228 (Buying and selling of offices), G.S. 14-230 (Failing to

1 discharge duties), G.S. 14-234 (Public officers or employees benefiting
2 from public contracts), or G.S. 14-234.1 (Misuse of confidential
3 information).

4 (7) A violation of G.S. 14-254 (Malfeasance of corporation officers and
5 agents).

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 of officers and employees of
11 Department of Transportation, members of Board of Transportation,
12 contractors, and others), G.S. 136-13.1 (Use of position to influence
13 elections or political action), G.S. 136-13.2 (Falsifying highway
14 inspection reports), G.S. 136-14 (Members not eligible for other
15 employment with Department; no sales to Department by employees;
16 members not to sell or trade property with Department; profiting from
17 official position; misuse of confidential information by Board
18 members).

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

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

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

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

1 voluntarily or that such persons request that they be allowed to testify
2 before the grand 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.

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

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

- 43 (1) To prosecute a witness who appeared before the grand jury for
44 contempt or perjury; or

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

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

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

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

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