

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 33

Short Title: Private Prosecution/Felony Offenses.

(Public)

Sponsors: Representative Luebke (By Request).

Referred to: Judiciary I.

February 18, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES
3 AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO
4 AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Chapter 7A of the General Statutes is amended by adding a
7 new article to read:

8 "Article 9A.

9 "Private Prosecution of Felony Offense.

10 "**§ 7A-70. Intent.**

11 It is the intent of this Article to authorize private prosecutions of felony offenses. It
12 is the further intent of this Article to provide that the discretion to prosecute a felony is
13 not limited to the district attorney, and to provide that a private party may retain private
14 counsel on behalf of a crime victim to submit a bill of indictment to a grand jury and to
15 prosecute a felony. The procedures for prosecuting a criminal offense set out in this
16 section are in addition to those provided under Article 9 of this Chapter and do not limit
17 those procedures in any way.

18 "**§ 7A-70.1. Private counsel may prosecute felony offense.**

19 (a) Notwithstanding any other provision of law, an attorney licensed to practice
20 law in North Carolina may submit a bill of indictment charging an offense within the
21 original jurisdiction of the superior court and may prosecute that case if the grand jury
22 returns a true bill of indictment. An attorney retained by a private citizen for this
23 purpose shall be designated a special prosecutor and shall have the same authority and
24 responsibility to prosecute the case as a district attorney.

25 (b) The provisions of Article 31 of Chapter 15A of the General Statutes shall
26 continue to apply to the submission of a bill of indictment and its consideration by the
27 grand jury, except that the special prosecutor shall carry out the responsibilities of the
28 district attorney.

29 "**§ 7A-70.2. District attorney to calendar cases prosecuted by special prosecutor.**

1 A special prosecutor retained under this Article shall provide written notice to the
2 district attorney in a timely manner stating that the special prosecutor has been retained
3 to prosecute a felony offense and requesting the district attorney to calendar the case
4 before the grand jury or on the trial docket as appropriate in accordance with G.S.
5 7A-61. Upon receipt of the written notice, the district attorney shall calendar the case as
6 provided by G.S. 7A-61.

7 **"§ 7A-70.3. State is not financially liable for compensation of special prosecutor.**

8 Public funds shall not be used to pay for legal services rendered by a special
9 prosecutor who submits a bill of indictment or prosecutes an offense under this Article.
10 The State is not financially responsible or liable for the services rendered by a special
11 prosecutor under this Article.

12 **"§ 7A-70.4. Concurrent prosecutions prohibited.**

13 If the district attorney is prosecuting a defendant for a felony offense, then a special
14 prosecutor shall not prosecute the defendant for the same offense. If a special prosecutor
15 is prosecuting a defendant for a felony offense, then the district attorney shall not
16 prosecute the defendant for the same offense."

17 **SECTION 2.** Section 18 of Article IV of the North Carolina Constitution
18 reads as rewritten:

19 **"Sec. 18. District Attorney and Prosecutorial Districts.**

20 (1) District Attorneys. The General Assembly shall, from time to time, divide the
21 State into a convenient number of prosecutorial districts, for each of which a District
22 Attorney shall be chosen for a term of four years by the qualified voters thereof, at the
23 same time and places as members of the General Assembly are elected. Only persons
24 duly authorized to practice law in the courts of this State shall be eligible for election or
25 appointment as a District Attorney. The District Attorney shall advise the officers of
26 justice in his district, be responsible for the prosecution on behalf of the State of all
27 criminal actions in the Superior Courts of his ~~district,~~ district except as otherwise
28 provided by law, perform such duties related to appeals therefrom as the Attorney
29 General may require, and perform such other duties as the General Assembly may
30 prescribe.

31 (2) Prosecution in District Court Division. Criminal actions in the District Court
32 Division shall be prosecuted in such manner as the General Assembly may prescribe by
33 general law uniformly applicable in every local court district of the State."

34 **SECTION 3.** The amendment set out in Section 2 of this act shall be
35 submitted to the qualified voters of the State at the next statewide general election,
36 which election shall be conducted under the laws then governing elections in the State.
37 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
38 General Statutes. The question to be used in the voting systems and ballots shall be:

39 "[] FOR [] AGAINST

40 Constitutional amendment authorizing the General Assembly to provide that
41 attorneys other than the district attorney may prosecute criminal actions in the Superior
42 Courts on behalf of the State."

43 **SECTION 4.** If a majority of votes cast on the question are in favor of the
44 amendments set out in Section 2 of this act, the State Board of Elections shall certify the

1 amendments to the Secretary of State. The Secretary of State shall enroll the amendment
2 so certified among the permanent records of that office.

3 **SECTION 5.** Section 1 of this act shall take effect only upon approval of the
4 voters of the constitutional amendment set forth in Section 2 of this act. If the
5 constitutional amendment proposed in Section 2 of this act is approved by the voters,
6 Section 1 of this act shall become effective at the same time as the constitutional
7 amendment.

8 **SECTION 6.** This act is effective when it becomes law.