

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE BILL 1404

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

Sponsors: Senators Stein; Stevens and Tillman.

Referred to: Judiciary I.

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF CRIMES FOR WHICH AN INVESTIGATIVE GRAND JURY CAN BE CONVENED AND TO APPROPRIATE FUNDS TO ASSIST WITH THE ADMINISTRATIVE COSTS INCURRED IN EXPANDING THE SCOPE OF THE INVESTIGATIVE JURY.

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.

(a) The mode of selecting grand jurors and of drawing and impaneling grand jurors is governed by this Article and Chapter 9 of the General Statutes, Jurors. Challenges to the panel from which grand jurors were drawn are governed by the procedure in G.S. 15A-1211.

(b) To impanel a new grand jury, the presiding judge must direct that the names of all persons returned as jurors be separately placed in a container. The clerk must draw out the names of 18 persons to serve as grand jurors. Of these 18, the first nine drawn serve until the first session of court at which criminal cases are heard held in the county after the following January 1, and thereafter until their replacements are selected and sworn. The next nine serve until the first session of court at which criminal cases are heard held in the county after the following July 1, and thereafter until their replacements are selected and sworn. If this formula results in any term likely to be shorter than two months or longer than 15 months, the presiding judge impaneling the grand jury may modify the terms. Thereafter, beginning with the first session of superior court at which criminal cases are heard held in the county following January 1 and July 1 of each year, nine new grand jurors must be selected in the manner provided above to replace the jurors whose terms have expired. All new grand jurors so selected serve until the first session of court at which criminal cases are heard held after January 1 or July 1 which most nearly results in a 12-month term, and thereafter until their replacements are selected and sworn. If a vacancy occurs in the membership of the grand jury, the superior court judge next convening the jury or next holding a session of court at which criminal cases are heard in the county may order that a new juror be drawn in the manner provided above to fill the vacancy.

The senior resident superior court judge of the district may impanel a second grand jury in any county of the district to serve concurrently with the first. The second grand jury shall be impaneled as provided in the first paragraph of this subsection. The court shall continue to have two grand juries until the senior resident superior court judge orders the second grand jury to terminate.

In any county the senior resident superior court judge, if he finds that grand jury service is placing a disproportionate burden on grand jurors and their employers, may fix the term of service of a grand juror at six months rather than 12 months. In doing so, he shall prescribe



1 procedures, consistent with this section, for replacement of half of the jurors of the grand jury
2 or grand juries approximately every three months.

3 (c) Neither the grand jury panel nor any individual grand juror may be challenged, but a
4 superior court judge may:

5 (1) At any time before new grand jurors are sworn, discharge them, or discharge
6 the grand jury, and cause new grand jurors or a new grand jury to be drawn
7 if he finds that jurors have not been selected in accordance with law or that
8 the grand jury is illegally constituted; or

9 (2) At any time after a grand juror is drawn, refuse to swear him, or discharge
10 him after he has been sworn, upon a finding that he is disqualified from
11 service, incapable of performing his duties, or guilty of misconduct in the
12 performance of his duties so as to impair the proper functioning of the grand
13 jury.

14 (d) The presiding judge may excuse a grand juror from service of the balance of his
15 term, upon his own motion or upon the juror's request for good cause shown. The foreman may
16 excuse individual jurors from attending particular sessions of the grand jury, except that he may
17 not excuse more than two jurors for any one session.

18 (e) After the impaneling of a new grand jury, or the impaneling of nine new jurors
19 under the terms of this section, the presiding judge must appoint one of the grand jurors as
20 foreman and may appoint another to act as foreman during any absence or disability of the
21 foreman. Unless removed for cause by a superior court judge, the foreman serves until his
22 successor is appointed and sworn.

23 (f) The foreman and other new grand jurors must take the oath prescribed in
24 G.S. 11-11. After new grand jurors have been sworn, the presiding judge may give the grand
25 jurors written or oral instructions relating to the performance of their duties. At subsequent
26 sessions of court, the presiding judge is not required to give any additional instructions to the
27 grand jurors.

28 (g) At any time when a grand jury is in recess, a superior court judge may, upon
29 application of the prosecutor or upon his own motion, order the grand jury reconvened for the
30 purpose of dealing with a matter requiring grand jury action.

31 (h) A written petition for convening of grand jury under this section may be filed by the
32 district attorney, the district attorney's designated assistant, or a special prosecutor requested
33 pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the
34 North Carolina Conference of District Attorneys, and with the concurrence of the Attorney
35 General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a
36 panel of three judges to determine whether to order the grand jury convened. A grand jury
37 under this section may be convened if the three-judge panel determines that:

38 (1) The petition alleges the commission of or a conspiracy to commit ~~a violation~~
39 ~~of G.S. 90-95(h) or G.S. 90-95.1, any of the crimes listed in subsection (i) of~~
40 this section, any part of which violation or conspiracy occurred in the county
41 where the grand jury sits, and that persons named in the petition have
42 knowledge related to the identity of the perpetrators of those crimes but will
43 not divulge that knowledge voluntarily or that such persons request that they
44 be allowed to testify before the grand jury; and

45 (2) The affidavit sets forth facts that establish probable cause to believe that the
46 crimes specified in the petition have been committed and reasonable grounds
47 to suspect that the persons named in the petition have knowledge related to
48 the identity of the perpetrators of those crimes.

49 The affidavit shall be based upon personal knowledge or, if the source of the information
50 and basis for the belief are stated, upon information and belief. The panel's order convening the
51 grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and

1 persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme
2 Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury
3 under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon
4 receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine
5 whether the grand jury should be convened as an investigative grand jury.

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

14 (i) An investigative grand jury may be convened pursuant to subsection (h) of this
15 section if the petition alleges the commission of or a conspiracy to commit any of the
16 following:

- 17 (1) A violation of G.S. 90-95(h) or G.S. 90-95.1.
- 18 (2) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes
19 (relating to bribery, obstructing justice, and secret listening), G.S. 14-228
20 (buying and selling of offices), G.S. 14-230 (failing to discharge duties),
21 G.S. 14-234 (public officers or employees benefiting from public contracts),
22 or G.S. 14-234.1 (misuse of confidential information).
- 23 (3) The misdemeanor or felony offense of obstruction of justice (common law
24 offense).
- 25 (4) A violation of G.S. 14-90 (embezzlement of property received by virtue of
26 office or employment), G.S. 14-100 (obtaining property by false pretenses),
27 G.S. 14-118.4 (extortion), or G.S. 14-119 (forgery of notes, checks, and
28 other securities; counterfeiting of instruments).
- 29 (5) A violation of Article 20, 22, or 22A of Chapter 163 of the General Statutes
30 (relating to absentee ballots, corrupt practices and other offenses against the
31 elective franchise, and regulation of contributions and expenditures in
32 political campaigns).
- 33 (6) A violation of G.S. 14-209 (perjury) or G.S. 14-210 (subornation of perjury).
- 34 (7) A violation of G.S. 14-254 (malfeasance of corporation officers and
35 agents)."

36 **SECTION 2.** There is appropriated from the General Fund to the Administrative
37 Office of the Courts the sum of twenty-five thousand dollars (\$25,000) for the 2010-2011 fiscal
38 year to assist with administrative expenses incurred in implementing this act.

39 **SECTION 3.** Section 1 of this act becomes effective December 1, 2010. The
40 remainder of this act becomes effective July 1, 2010.