

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

1

HOUSE BILL 1304

Short Title: Investigative Grand Jury. (Public)

Sponsors: Representative Blust.

Referred to: Judiciary I, if favorable, State Government/State Personnel, if favorable,
Appropriations.

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CONVENING OF AN INVESTIGATIVE GRAND JURY.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 15A-622(h) is recodified as G.S. 15A-632(c).

5 **SECTION 2.** G.S. 15A-623(h) is recodified as G.S. 15A-632(d).

6 **SECTION 3.** G.S. 15A-632, as recodified by this act, reads as rewritten:

7 **"§ 15A-632. Investigative grand jury.**

8 (a) Allegations Subject to Investigation. – An investigative grand jury may be convened
9 in accordance with this section to investigate an allegation regarding the commission or
10 conspiracy of any of the following:

- 11 (1) The misdemeanor or felony offense of obstruction of justice (Common law
12 offense).
- 13 (2) A violation of G.S. 14-7 (Murder) or G.S. 14-18 (Manslaughter).
- 14 (3) A violation of G.S. 14-90 (Embezzlement), G.S. 14-100 (False pretenses),
15 G.S. 14-118.4 (Extortion), or G.S. 14-119 (Forgery).
- 16 (4) A violation of G.S. 14-190.6 through G.S. 14-190.8 or G.S. 14-190.14
17 through G.S. 14-190.19 (Relating to the distribution of certain materials to
18 minors, the use of a minor for obscene purposes, sexual exploitation of a
19 minor, and the promotion of or participation in prostitution of a minor).
- 20 (5) A violation of G.S. 14-209 (Perjury) or G.S. 14-210 (Subornation of
21 perjury).
- 22 (6) A violation of Article 29, 30, or 30A of Chapter 14 of the General Statutes
23 (Relating to perjury, bribery of officials and jurors, obstructing justice, and
24 secret listening), G.S. 14-228 (Relating to buying and selling of offices),
25 G.S. 14-230 (Failing to discharge duties), G.S. 14-234 (Conflict of interest),
26 or G.S. 14-234.1 (Misuse of confidential information).
- 27 (7) A violation of G.S. 14-254 (Corporate malfeasance).
- 28 (8) A violation of Article 37 of Chapter 14 of the General Statutes (Relating to
29 lotteries, gaming, bingo, and raffles).
- 30 (9) A violation of G.S. 90-95(h) or G.S. 90-95.1 (Relating to controlled
31 substances and continuing criminal enterprises).
- 32 (10) A violation of G.S. 136-13 (Malfeasance at Department of Transportation),
33 G.S. 136-13.1 (Use of position to influence elections or political action),
34 G.S. 136-13.2 (Falsifying highway inspection reports), G.S. 136-14
35 (Profiting from official position at Department of Transportation; misuse of
36 confidential information by Board members).



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

5 (b) Appointment of Permanent Three-Judge Panel to Determine Whether to Convene
6 Investigative Grand Jury. – Beginning July 1, 2010, and every two years thereafter, the Chief
7 Justice shall appoint a permanent panel of three superior court judges to determine whether to
8 order an investigative grand jury convened under this section. The panel of judges shall be
9 appointed to serve for a term of two years. The Chief Justice shall fill any vacancy that occurs
10 on the panel before the two-year term ends.

11 (c) Procedure for Determining Whether to Convene Investigative Grand Jury. – A
12 written petition for convening of an investigative grand jury under this section may be filed by
13 the district attorney, the district attorney's designated assistant, or a special prosecutor requested
14 pursuant to G.S. 114-11.6, with the approval of a committee of at least three members of the
15 North Carolina Conference of District Attorneys, and with the concurrence of the Attorney
16 General, G.S. 114-11.6 with the Clerk of the North Carolina Supreme Court. The Chief Justice
17 shall appoint a panel of three judges to determine whether to order the grand jury convened.
18 The petition shall be forwarded to the Chief Justice who shall refer the petition to the panel of
19 three judges established under subsection (b) of this section to determine whether to order the
20 grand jury convened. A grand juryAn investigative grand jury under this section may be
21 convened if the three-judge panel determines ~~that~~ all of the following:

- 22 (1) The petition alleges the commission of or a conspiracy to commit a violation
23 of G.S. 90-95(h) or G.S. 90-95.1, any of the offenses listed in subsection (a)
24 of this section, any part of which violation or conspiracy occurred in the
25 county where the proposed investigative grand jury sits, sits or will sit, and
26 that persons named in the petition have knowledge related to the identity of
27 the perpetrators of those crimes but will not divulge that knowledge
28 voluntarily or that such persons request that they be allowed to testify before
29 the grand jury; and grand jury.
- 30 (2) The affidavit sets forth facts that establish probable cause to believe that the
31 crimes specified in the petition have been committed and reasonable grounds
32 to suspect that the persons named in the petition have knowledge related to
33 the identity of the perpetrators of those crimes.

34 The affidavit shall be based upon personal knowledge or, if the source of the information
35 and basis for the belief are stated, upon information and belief. The panel's order convening the
36 grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and
37 persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme
38 Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury
39 under this Article. The contents of the petition and the affidavit shall not be disclosed. ~~Upon~~
40 ~~receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine~~
41 ~~whether the grand jury should be convened as an investigative grand jury.~~

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

50 (d) Investigative Grand Jury Proceedings and Operations. – If a grand juryan
51 investigative grand jury is convened pursuant to G.S. 15A-622(h), this section, notwithstanding

1 ~~subsection (d) of this section, G.S. 15A-623(d),~~ a prosecutor shall be present to examine
2 witnesses, and a court reporter shall be present and record the examination of witnesses. The
3 record shall be transcribed. If the prosecutor determines that it is necessary to compel testimony
4 from the witness, ~~he the prosecutor~~ may grant use immunity to the witness. The grant of use
5 immunity shall be given to the witness in writing by the prosecutor and shall be signed by the
6 prosecutor. The written grant of use immunity shall also be read into the record by the
7 prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-1051. A
8 witness shall have the right to leave the grand jury room to consult with ~~his the witness's~~
9 counsel at reasonable intervals and for a reasonable period of time upon the request of the
10 witness. Notwithstanding ~~subsection (e) of this section, G.S. 15A-623(e),~~ the record of the
11 examination of witnesses shall be made available to the examining prosecutor, and ~~he the~~
12 ~~prosecutor~~ may disclose contents of the record to other investigative or law-enforcement
13 officers, the witness or ~~his the witness's~~ attorney to the extent that the disclosure is appropriate
14 to the proper performance of ~~his the prosecutor's~~ official duties. The record of the examination
15 of a witness may be used in a trial to the extent that it is relevant and otherwise admissible.
16 Further disclosure of grand jury proceedings convened pursuant to this act may be made upon
17 written order of a superior court judge if the judge determines disclosure is essential:

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

22 Upon the convening of the investigative grand jury pursuant to ~~approval by the three judge~~
23 ~~panel, this section,~~ the district attorney shall subpoena the witnesses. The subpoena shall be
24 served by the investigative grand jury officer, who shall be appointed by the court. The name of
25 the person subpoenaed and the issuance and service of the subpoena shall not be disclosed,
26 except that a witness so subpoenaed may divulge that information. The presiding superior court
27 judge shall hear any matter concerning the investigative grand jury in camera to the extent
28 necessary to prevent disclosure of its existence. The court reporter for the investigative grand
29 jury shall be present and record and transcribe the in camera proceeding. The transcription of
30 any in camera proceeding and a copy of all subpoenas and other process shall be returned to the
31 Chief Justice or to such member of the three-judge panel as the Chief Justice may designate, to
32 be filed with the Clerk of the North Carolina Supreme Court. The subpoena shall otherwise be
33 subject to the provisions of G.S. 15A-801 and Article 43 of Chapter 15A. When an
34 investigative grand jury has completed its investigation of the crimes alleged in the petition, the
35 investigative functions of the grand jury shall be dissolved and such investigation shall cease.
36 The District Attorney shall file a notice of dissolution of the investigative functions of the
37 grand jury with the Clerk of the North Carolina Supreme Court."

38 **SECTION 4.** This act becomes effective January 1, 2010.