

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1991**

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SENATE BILL 716  
House Committee Substitute Favorable 6/26/91

Short Title: Grand Jury Drug Investigations.

(Public)

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Sponsors:

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Referred to:

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April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO LAWS PERMITTING GRAND JURIES TO INVESTIGATE DRUG-TRAFFICKING CHARGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-622(h) reads as rewritten:

"(h) A written petition for convening of grand jury under this section may be filed by the district attorney, with the approval of a committee of at least three members of the North Carolina Conference of District Attorneys, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

- (1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and
- (2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition

1           have knowledge related to the identity of the perpetrators of those  
2           crimes.

3           The affidavit shall be based upon personal knowledge or, if the source of the  
4 information and basis for the belief are stated, upon information and belief. The panel's  
5 order convening the grand jury as an investigative grand jury shall direct the grand jury  
6 to investigate the crimes and persons named in the petition, and shall be filed with the  
7 Clerk of the North Carolina Supreme Court. A grand jury so convened retains all  
8 powers, duties, and responsibilities of a grand jury under this Article. The contents of  
9 the petition and the affidavit shall not be disclosed. Upon receiving a petition under this  
10 subsection, the Chief Justice shall appoint a panel to determine whether the grand jury  
11 should be convened as an investigative grand jury.

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

20           Sec. 2. G.S. 15A-623(h) reads as rewritten:

21           "(h) If a grand jury is convened pursuant to G.S. 15A-622(h), notwithstanding  
22 subsection (d) of this section, a prosecutor shall be present to examine witnesses, and a  
23 court reporter shall be present and record the examination of witnesses. The record shall  
24 be transcribed. If the prosecutor determines that it is necessary to compel testimony  
25 from the witness, he may grant use immunity to the witness. The grant of use immunity  
26 shall be given to the witness in writing by the prosecutor and shall be signed by the  
27 prosecutor. The written grant of use immunity shall also be read into the record by the  
28 prosecutor and shall include an explanation of use immunity as provided in G.S. 15A-  
29 1051. A witness shall have the right to leave the grand jury room to consult with his  
30 counsel at reasonable intervals and for a reasonable period of time upon the request of  
31 the witness. Notwithstanding subsection (e) of this section, the record of the  
32 examination of witnesses shall be made available to the examining prosecutor, and he  
33 may disclose contents of the record to other investigative or law-enforcement officers,  
34 the witness or his attorney to the extent that the disclosure is appropriate to the proper  
35 performance of his official duties. The record of the examination of a witness may be  
36 used in a trial ~~to corroborate or impeach that witness~~ to the extent that it is relevant and  
37 otherwise admissible. Further disclosure of grand jury proceedings convened pursuant  
38 to this act may be made upon written order of a superior court judge if the judge  
39 determines disclosure is essential:

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

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

18 Sec. 3. Section 6 of Chapter 843 of the Session Laws of 1985, as amended by  
19 Chapter 1040 of the Session Laws of 1987, reads as rewritten:

20 "Sec. 6. This act shall become effective ~~October 1, 1986 and shall expire October 1,~~  
21 ~~1991, but the said expiration date shall not affect the term or authority of a grand jury~~  
22 ~~constituted at that time. October 1, 1986."~~

23 Sec. 4. This act is effective upon ratification.