

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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HOUSE BILL 935

Short Title: Criminal Procedure Changes/Drug Court Funds. (Public)

Sponsors: Representative L. Hall (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Appropriations.

April 20, 2015

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO RESTORE STATE FUNDING OF DRUG TREATMENT COURTS, TO PROVIDE THAT AN INVESTIGATIVE GRAND JURY MAY BE CONVENED TO INVESTIGATE ALLEGATIONS OF ILLEGAL USE OF FORCE BY LAW ENFORCEMENT OFFICERS, AND TO AMEND THE NORTH CAROLINA CONSTITUTION TO AUTHORIZE AN OFFICIAL OTHER THAN A DISTRICT ATTORNEY TO REQUEST A SPECIAL PROSECUTOR AND ALSO AUTHORIZE PRIVATE PROSECUTIONS OF FELONY OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Judicial Department the sum of three million one hundred eighty-five thousand eight hundred eighty-eight dollars (\$3,185,888) for the 2015-2016 fiscal year and the sum of three million one hundred eighty-five thousand eight hundred eighty-eight dollars (\$3,185,888) for the 2016-2017 fiscal year to provide State funding for 33 full-time equivalent positions for the operation of all currently existing drug treatment courts.

SECTION 2. G.S. 15A-622(i) reads as rewritten:

(i) An investigative grand jury may be convened pursuant to subsection (h) of this section if the petition alleges ~~the~~ any of the following:

(1) The commission of, attempt to commit or solicitation to commit, or a conspiracy to commit a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude).

(2) The illegal use of force. For purposes of this subdivision, the term "use of force" means "the amount of effort required by a law enforcement officer to compel compliance by an unwilling subject."

SECTION 3. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 10.

"Private Prosecution of Felony Offense.

"§ 7A-70. Intent.

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



1 **"§ 7A-70.1. Private counsel may prosecute felony offense.**

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

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

11 **"§ 7A-70.2. District attorney to calendar cases prosecuted by special prosecutor.**

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

17 **"§ 7A-70.3. Attorneys' fees.**

18 In any case successfully prosecuted under this Article, the court shall order payment to the
19 special prosecutor for legal services rendered and for expenses incurred. The fee to which a
20 special prosecutor under this section is entitled shall be fixed in accordance with rules adopted
21 by the Office of Indigent Defense Services for private assigned counsel and contract attorneys.
22 Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the
23 nature of the case and the time, effort, and responsibility involved.

24 **"§ 7A-70.4. Concurrent prosecutions prohibited.**

25 If the district attorney is prosecuting a defendant for a felony offense, then a special
26 prosecutor shall not prosecute the defendant for the same offense. If a special prosecutor is
27 prosecuting a defendant for a felony offense, then the district attorney shall not prosecute the
28 defendant for the same offense."

29 **SECTION 4.** G.S. 114-11.6 reads as rewritten:

30 **"§ 114-11.6. Division established; ~~duties~~; request for special prosecutor by official**
31 **other than district attorney.**

32 (a) There is hereby established in the office of the Attorney General of North Carolina,
33 a Special Prosecution Division. The attorneys assigned to this Division shall be available to
34 prosecute or assist in the prosecution of criminal cases when requested to do so by a district
35 ~~attorney~~ attorney, clerk of court, registrar of deeds, or legislator and the Attorney General
36 approves. In addition, these attorneys assigned to this Division shall serve as legal advisers to
37 the State Bureau of Investigation and the Police Information Network and perform any other
38 duties assigned to them by the Attorney General.

39 (b) If the Attorney General approves a request for the prosecution of a criminal case
40 from a clerk of court, registrar of deeds, or legislator, the Attorney General shall provide
41 written notice to the district attorney in a timely manner stating that a special prosecutor has
42 been requested pursuant to subsection (a) of this section to prosecute a felony offense and
43 requesting the district attorney to calendar the case before the grand jury in accordance with
44 G.S. 7A-61. Upon receipt of the written notice, the district attorney shall calendar the case as
45 provided by G.S. 7A-61."

46 **SECTION 5.(a)** Section 18 of Article IV of the North Carolina Constitution reads
47 as rewritten:

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

49 (1) District Attorneys. The General Assembly shall, from time to time, divide the State
50 into a convenient number of prosecutorial districts, for each of which a District Attorney shall
51 be chosen for a term of four years by the qualified voters thereof, at the same time and places as

1 members of the General Assembly are elected. Only persons duly authorized to practice law in
2 the courts of this State shall be eligible for election or appointment as a District Attorney. The
3 District Attorney shall advise the officers of justice in his district, be responsible for the
4 prosecution on behalf of the State of all criminal actions in the Superior Courts of his ~~district,~~
5 district except as otherwise provided by law, perform such duties related to appeals therefrom
6 as the Attorney General may require, and perform such other duties as the General Assembly
7 may prescribe.

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

11 **SECTION 5.(b)** The amendment set out in subsection (a) of this section shall be
12 submitted to the qualified voters of the State at the next statewide general election, which
13 election shall be conducted under the laws then governing elections in the State. Ballots, voting
14 systems, or both may be used in accordance with Chapter 163 of the General Statutes. The
15 question to be used in the voting systems and ballots shall be:

16 "[] FOR [] AGAINST

17 Constitutional amendment authorizing the General Assembly to provide that
18 officials other than district attorneys may request special prosecutors to prosecute a criminal
19 action and to provide that attorneys other than the district attorney may prosecute criminal
20 actions in the Superior Courts on behalf of the State."

21 **SECTION 5.(c)** If a majority of votes cast on the question are in favor of the
22 amendment set out in subsection (b) of this section, the State Board of Elections shall certify
23 the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
24 certified among the permanent records of that office.

25 **SECTION 6.** Section 3 and Section 4 of this act shall take effect only upon
26 approval of the voters of the constitutional amendment set forth in Section 5 of this act. If the
27 constitutional amendment proposed in Section 5 of this act is approved by the voters, Sections
28 3 and 4 of this act shall become effective at the same time as the constitutional amendment.

29 **SECTION 7.** Section 1 of this act becomes effective July 1, 2015. Section 2 of this
30 act becomes effective December 1, 2015. The remainder of this act is effective when it
31 becomes law.