

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55266-LL-141* (3/5)

Short Title: Office of Prosecution Services. (Public)

Sponsors: Senators Brunstetter, and Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN OFFICE OF PROSECUTION SERVICES TO MANAGE THE
3 BUDGETARY ASPECTS OF THE VARIOUS DISTRICT ATTORNEY OFFICES.

4 The General Assembly of North Carolina enacts:

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

7 "Article 10.

8 "Prosecution Services Act.

9 **"§ 7A-80. Title.**

10 This Article shall be known and may be cited as the "Prosecution Services Act of 2009."

11 **"§ 7A-81. Purpose.**

12 The purpose of this Article is to:

- 13 (1) Enhance oversight of the criminal prosecution and related services provided
14 at State expense;
15 (2) Improve the quality of prosecution and ensure that justice is being sought on
16 behalf of the people of the State of North Carolina;
17 (3) Establish uniform policies and procedures for the delivery of prosecution
18 services;
19 (4) Generate reliable statistical information in order to evaluate the prosecution
20 services provided and funds expended; and
21 (5) Deliver prosecution services in the most efficient and cost-effective manner
22 without sacrificing the quality of justice.

23 **"§ 7A-82. Establishment of Office of Prosecution Services.**

24 (a) The Office of Prosecution Services, which is administered by the Director of
25 Prosecution Services and includes the Commission on Prosecution Services, is created within
26 the Judicial Department. As used in this Article, "Office" means the Office of Prosecution
27 Services, "Director" means the Director of Prosecution Services, and "Commission" means the
28 Commission on Prosecution Services.

29 (b) The Office of Prosecution Services shall exercise its prescribed powers
30 independently of the head of the Administrative Office of the Courts. The Office may enter into
31 contracts, own property, and accept funds, grants, and gifts from any public or private source to
32 pay expenses incident to implementing its purposes.

33 (c) The Director of the Administrative Office of the Courts shall provide general
34 administrative support to the Office of Prosecution Services. The term "general administrative
35 support" includes purchasing, payroll, and similar administrative services.



1 (d) The budget of the Office of Prosecution Services shall be a part of the Judicial
2 Department's budget. The Commission on Prosecution Services shall consult with the Director
3 of the Administrative Office of the Courts, who shall assist the Commission in preparing and
4 presenting to the General Assembly the Office's budget, but the Commission shall have the
5 final authority with respect to preparation of the Office's budget and with respect to
6 representation of matters pertaining to the Office before the General Assembly.

7 (e) The Director of the Administrative Office of the Courts shall not reduce or modify
8 the budget of the Office of Prosecution Services or use funds appropriated to the Office without
9 the approval of the Commission.

10 **"§ 7A-83. Responsibilities of the Office of Prosecution Services.**

11 The Office shall be responsible for:

- 12 (1) Establishing management and oversight of the budget for the district
13 attorneys and any disbursement of funds;
- 14 (2) Identifying programs and policies that create greater efficiencies and
15 effectiveness in the prosecution function and that provide information on the
16 fiscal and practical impact created by changes in the criminal law and
17 procedure;
- 18 (3) Supporting the offices of district attorneys and their staffs through training,
19 technical assistance, publications, and related services;
- 20 (4) Providing district attorneys with the information and technology that they
21 need to effectively process their caseloads and comply with statutory
22 requirements; and
- 23 (5) Providing, in extraordinary circumstances, assignment of special prosecutors
24 and determine compensation if necessary.

25 **"§ 7A-84. Establishment of the Commission on Prosecution Services.**

26 (a) The Commission on Prosecution Services is created within the Office of
27 Prosecution Services and shall consist of 13 members. To create an effective working group,
28 assure continuity, and achieve staggered terms, the Commission shall be appointed as provided
29 in this section.

30 (b) The members of the Commission shall be appointed as follows:

- 31 (1) The Chief Justice of the North Carolina Supreme Court shall appoint three
32 members, two of whom shall be active district attorneys and one of whom
33 shall be a nonattorney.
- 34 (2) The Governor shall appoint three members, two of whom shall be active
35 district attorneys and one of whom shall be a nonattorney.
- 36 (3) The General Assembly shall appoint two members, one of whom shall be an
37 active district attorney and one of whom shall be an attorney, upon the
38 recommendation of the President Pro Tempore of the Senate.
- 39 (4) The General Assembly shall appoint two members, one of whom shall be an
40 active district attorney and one of whom shall be an attorney, upon the
41 recommendation of the Speaker of the House of Representatives.
- 42 (5) The North Carolina State Bar shall appoint one member, who shall be an
43 attorney.
- 44 (6) The Attorney General.
- 45 (7) The Secretary of Crime Control and Public Safety.

46 (c) The terms of members appointed pursuant to subsection (b) of this section shall be
47 as follows:

- 48 (1) The initial appointments by the Chief Justice shall be for four years.
- 49 (2) The initial appointments by the Governor shall be for three years.

1 (3) The initial appointments of active district attorneys by the General Assembly
2 and the initial appointment by the North Carolina State Bar shall be for two
3 years.

4 (4) The initial appointments of attorneys by the General Assembly shall be for
5 one year.

6 At the expiration of these initial terms, appointments shall be for four years and shall be
7 made by the appointing authorities designated in subsection (b) of this section. No person shall
8 serve more than two consecutive four-year terms plus any initial term of less than four years.

9 (d) Persons appointed to the Commission shall have significant experience in the
10 prosecution of criminal or other cases subject to this Article or shall have demonstrated a strong
11 commitment to the quality of prosecution and ensuring that justice is being sought on behalf of
12 the people of North Carolina. No persons active in providing criminal defense services,
13 including lawyers, public defenders, or sentencing services, or active employees of such
14 persons may be appointed to, or serve on, the Commission. No active judicial officials, or
15 active employees of such persons, may be appointed to, or serve on, the Commission.

16 (e) All members of the Commission are entitled to vote on any matters coming before
17 the Commission unless otherwise provided by rules adopted by the Commission concerning
18 voting on matters in which a member has, or appears to have, a financial or other personal
19 interest.

20 (f) Each member of the Commission shall serve until a successor in office has been
21 appointed. Vacancies shall be filled by appointment by the appointing authority for the
22 unexpired term. Removal of Commission members shall be in accordance with policies and
23 procedures adopted by the Commission.

24 (g) A quorum for purposes of conducting Commission business shall be a majority of
25 the members of the Commission.

26 (h) The Commission shall elect a Commission chair, who shall be an active district
27 attorney, from the members of the Commission for a term of two years.

28 (i) The Director of Prosecution Services shall attend all Commission meetings except
29 those relating to removal or reappointment of the Director or allegations of misconduct by the
30 Director. The Director shall not vote on any matter decided by the Commission.

31 (j) Commission members shall not receive compensation but are entitled to be paid
32 necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as
33 applicable.

34 (k) The Commission shall hold its first meeting no later than September 15, 2009. All
35 appointments to the Commission shall be made by the appointing authorities by September 1,
36 2009. An appointee of the Chief Justice, to be designated at the time of appointment, shall
37 convene the first meeting. At that first meeting, the Commission shall elect its chair.

38 **"§ 7A-85. Responsibilities of the Commission on Prosecution Services.**

39 (a) The Commission shall have as its principal purpose the development and
40 improvement of programs by which the Office of Prosecution Services provides oversight of
41 criminal prosecution and related service.

42 (b) The Commission shall appoint the Director of Prosecution Services, who shall be
43 chosen on the basis of training, experience, and other qualifications. The Commission shall
44 consult with the Chief Justice and Director of the Administrative Office of the Courts in
45 selecting a Director, but shall have final authority in making the appointment.

46 (c) The Commission shall develop uniform policies and procedures governing the
47 provision of prosecutions services under this Article. The standards shall include:

48 (1) Standards for maintaining and operating of district attorney offices,
49 including requirements regarding qualifications, training, and size of the
50 legal and supporting staff;

- 1 (2) Standards prescribing minimum experience, training, and other
- 2 qualifications for assistant district attorneys;
- 3 (3) Standards for assistant district attorney caseloads;
- 4 (4) Standards for the performance of assistant district attorneys;
- 5 (5) Standards for the independent, competent, and efficient representation of
- 6 cases that present conflicts of interest, in both the trial and appellate courts;
- 7 (6) Standards for providing and compensating experts and others who provide
- 8 services related to prosecution;
- 9 (7) Standards for qualifications and performance in capital cases, consistent with
- 10 any rules adopted by the Supreme Court.

11 (d) The Commission shall determine the methods for delivering prosecution services
12 under this Article in the most efficient and cost-effective manner without sacrificing the quality
13 of justice.

14 (e) The Commission shall establish policies and procedures with respect to the
15 distribution of funds appropriated under this Article, including rates of compensation for
16 assistant district attorneys, schedules of allowable expenses, and the appointment and
17 compensation of expert witnesses.

18 (g) The Commission shall approve and recommend to the General Assembly a budget
19 for the Office of Prosecution Services.

20 (h) The Commission shall adopt such other rules and procedures as it deems necessary
21 for the conduct of business by the Commission and the Office of Prosecution Services.

22 **"§ 7A-86. Director of Prosecution Services.**

23 (a) The Director of Prosecution Services shall be appointed by the Commission for a
24 term of four years. The salary of the Director shall be set by the General Assembly in the
25 Current Operations Appropriations Act, after consultation with the Commission. The Director
26 may be removed during this term in the discretion of the Commission by a vote of two-thirds of
27 all of the Commission members.

28 (b) The Director shall:

- 29 (1) Prepare and submit to the Commission a proposed budget for the Office of
- 30 Prosecution Services, an annual report containing pertinent data on the
- 31 operations, costs, and needs of the Office, and such other information as the
- 32 Commission may require.
- 33 (2) Assist the Commission in developing rules and standards for the delivery of
- 34 services under this Article.
- 35 (3) Administer and coordinate the operations of the Office and supervise
- 36 compliance with standards adopted by the Commission.
- 37 (4) Subject to policies and procedures established by the Commission, hire such
- 38 professional, technical, and support personnel as deemed reasonably
- 39 necessary for the efficient operation of the Office of Prosecution Defense
- 40 Services.
- 41 (5) Keep and maintain proper financial records for use in calculating the costs of
- 42 the operations of the Office of Prosecution Services.
- 43 (6) Apply for and accept on behalf of the Office of Prosecution Services any
- 44 funds that may become available from government grants, private gifts,
- 45 donations, or bequests from any source.
- 46 (7) Perform other duties as the Commission may assign.

47 (c) In lieu of merit and other increment raises paid to regular State employees, the
48 Director of Prosecution Services shall receive as longevity pay an amount equal to four and
49 eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations
50 Appropriations Act payable monthly after five years of service, nine and six-tenths percent
51 (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of

1 service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four
2 percent (24%) after 25 years of service. "Service" means service as Director of Prosecution
3 Services, a public defender, appellate defender, assistant public or appellate defender, district
4 attorney, assistant district attorney, justice or judge of the General Court of Justice, or clerk of
5 superior court."

6 **SECTION 2.** Article 32 of Chapter 7A of the General Statutes is abolished.

7 **SECTION 3.** G.S. 7A-60(a2) reads as rewritten:

8 "(a2) Upon the convening of each regular session of the General Assembly and its
9 reconvening in the even-numbered year, the ~~Administrative Office of the Courts~~ Office of
10 Prosecution Services shall report its recommendations regarding the allocation of assistant
11 district attorneys for the upcoming fiscal biennium and fiscal year to the General Assembly,
12 including any request for additional assistant district attorneys. The report shall include the
13 number of assistant district attorneys that the ~~Administrative Office of the Courts~~ Office of
14 Prosecution Services recommends to be allocated to each prosecutorial district and the caseload
15 and criteria on which each recommended allocation is based. Any reports required under this
16 subsection shall be made to the Joint Legislative Commission of Governmental Operations, the
17 House of Representatives and Senate Appropriations Subcommittees on Justice and Public, and
18 the Fiscal Research Division."

19 **SECTION 4.** G.S. 7A-64 reads as rewritten:

20 **"§ 7A-64. Temporary assistance for district attorneys.**

21 (a) A district attorney may apply to the ~~Director of the Administrative Office of the~~
22 ~~Courts~~ Director of Prosecution Services to:

- 23 (1) Temporarily assign an assistant district attorney from another district, after
24 consultation with the district attorney thereof, to assist in the prosecution of
25 cases in the requesting district;
- 26 (2) Authorize the temporary appointment, by the requesting district attorney, of
27 a qualified attorney to assist the requesting district attorney; or
- 28 (3) Enter into contracts with local governments for the provision of services by
29 the State pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

30 (b) The ~~Director of the Administrative Office of the Courts~~ Director of Prosecution
31 Services may provide this assistance only upon a showing by the requesting district attorney,
32 supported by facts, that:

- 33 (1) Criminal cases have accumulated on the dockets of the superior or district
34 courts of the district beyond the capacity of the district attorney and the
35 district attorney's full-time assistants to keep the dockets reasonably current;
36 or
- 37 (2) The overwhelming public interest warrants the use of additional resources
38 for the speedy disposition of cases involving drug offenses, domestic
39 violence, or other offenses involving a threat to public safety.

40 (c) The length of service and compensation of any temporary appointee or the terms of
41 any contract entered into with local governments shall be fixed by ~~Director of the~~
42 ~~Administrative Office of the Courts~~ Director of Prosecution Services in each case. Nothing in
43 this section shall be construed to obligate the General Assembly to make any appropriation to
44 implement the provisions of this section or to obligate the ~~Administrative Office of the Courts~~
45 Office of Prosecution Services to provide the administrative costs of establishing or
46 maintaining the positions or services provided for under this section. Further, nothing in this
47 section shall be construed to obligate the ~~Administrative Office of the Courts~~ Office of
48 Prosecution Services to maintain positions or services initially provided for under this section."

49 **SECTION 5.** G.S. 7A-65(d) reads rewritten:

50 "(d) In lieu of merit and other increment raises paid to regular State employees, an
51 assistant district attorney shall receive as longevity pay an amount equal to four and

1 eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations
2 Appropriations Act payable monthly after five years of service, nine and six-tenths percent
3 (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of
4 service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four
5 percent (24%) after 25 years of service. "Service" means service as an assistant district
6 attorney, district attorney, resource prosecutor, public defender, appellate defender, assistant
7 public or appellate defender, justice or judge of the General Court of Justice, or clerk of
8 superior court. For purposes of this subsection, "resource prosecutor" means a former assistant
9 district attorney who has left the employment of the district attorney's office to serve in a
10 specific, time-limited position with the ~~Conference of District Attorneys~~. Commission on
11 Prosecution Services."

12 **SECTION 6.** G.S. 7A-343(2) reads as rewritten:

13 **"§ 7A-343. Duties of Director.**

14 The Director is the Administrative Officer of the Courts, and the Director's duties include
15 all of the following:

16 ...

- 17 (2) Determine the state of the dockets and evaluate the practices and procedures
18 of the courts, and make recommendations concerning the number of ~~judges,~~
19 ~~district attorneys,~~ judges and magistrates required for the efficient
20 administration of justice.

21"

22 **SECTION 7.** G.S. 7A-347 reads as rewritten:

23 **"§ 7A-347. Assistants for administrative and victim and witness services.**

24 Assistant for administrative and victim and witness services positions are established under
25 the district attorneys' offices. Each prosecutorial district is allocated at least one assistant for
26 administrative and victim and witness services to be employed by the district attorney. The
27 ~~Administrative Office of the Courts~~ Office of Prosecution Services shall allocate additional
28 assistants to prosecutorial districts on the basis of need and within available appropriations.
29 Each district attorney may also use any volunteer or other personnel to assist the assistant. The
30 assistant is responsible for coordinating efforts of the law-enforcement and judicial systems to
31 assure that each victim and witness is provided fair treatment under Article 45 of Chapter 15A,
32 Fair Treatment for Victims and Witnesses and shall also provide administrative and legal
33 support to the district attorney's office."

34 **SECTION 8.** G.S. 7A-348 reads as rewritten:

35 **"§ 7A-348. Training and supervision of assistants for administrative and victim and**
36 **witness services.**

37 Pursuant to the provisions of G.S. 7A-413, the ~~Conference of District Attorneys~~
38 Commission on Prosecution Services shall:

- 39 (1) Assist in establishing uniform statewide training for assistants for
40 administrative and victim and witness services; and
41 (2) Assist in the implementation and supervision of this program."

42 **SECTION 9.** G.S. 7B-1402(b)(21) reads as rewritten:

43 "(21) A district attorney, appointed by the President Pro Tempore of the Senate
44 upon recommendation of the ~~President of the North Carolina Conference of~~
45 ~~District Attorneys~~; Commission on Prosecution Services."

46 **SECTION 10.** G.S. 14-107.2(b) reads as rewritten:

47 "(b) Upon authorization by the ~~Administrative Office of the Courts~~, Office of
48 Prosecution Services, a district attorney may establish a program for the collection of worthless
49 checks in cases that may be prosecuted under G.S. 14-107. The district attorney may establish a
50 program for the collection of worthless checks in cases that would be punishable as

1 misdemeanors, in cases that would be punishable as felonies, or both. The district attorney shall
2 establish criteria for the types of worthless check cases that will be eligible under the program."

3 **SECTION 11.** G.S. 15A-622(h) reads as rewritten:

4 "(h) A written petition for convening of grand jury under this section may be filed by the
5 district attorney, the district attorney's designated assistant, or a special prosecutor requested
6 pursuant to G.S. 114-11.6, with the approval of ~~a committee of at least three members of the~~
7 ~~North Carolina Conference of District Attorneys,~~ the Commission on Prosecution Services, and
8 with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme
9 Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the
10 grand jury convened. A grand jury under this section may be convened if the three-judge panel
11 determines that:

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

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

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

38 **SECTION 12.** G.S. 15A-1475 reads as rewritten:

39 **"§ 15A-1475. Reports.**

40 Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry
41 Commission shall report on its activities to the Joint Legislative Corrections, Crime Control,
42 and Juvenile Justice Oversight Committee and the State Judicial Council. The report may
43 contain recommendations of any needed legislative changes related to the activities of the
44 Commission. The report shall recommend the funding needed by the Commission, the district
45 attorneys, and the State Bureau of Investigation in order to meet their responsibilities under
46 S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of
47 Investigation shall only be made after consultations with the ~~North Carolina Conference of~~
48 ~~District Attorneys~~ Commission on Prosecution Services and the Attorney General."

49 **SECTION 13.** G.S. 120-226(c)(8) reads as rewritten:

1 "(8) One representative from the ~~Conference of District Attorneys of North~~
2 ~~Carolina, Commission on Prosecution Services~~, as appointed by the Speaker
3 of the House of Representatives."

4 **SECTION 14.** G.S. 143-661(b)(4)b. reads as rewritten:

5 "b. One member who is a district attorney or an assistant district attorney
6 upon the recommendation of the Conference of District Attorneys of
7 North Carolina, for a term beginning July 1, 1998, and expiring June
8 30, 1999. For the term beginning July 1, 2011, this appointment shall
9 be made upon the recommendation of the Commission on
10 Prosecution Services."

11 **SECTION 15.** G.S. 164-37(17) reads as rewritten:

12 "(17) The ~~President of the Conference of District Attorneys~~ Chair of the
13 Commission on Prosecution Services or his designee."

14 **SECTION 16.** The Commission on Prosecution Services shall report on or before
15 May 1, 2010, to the Chairs of the Senate and House Appropriations Committees and the Chairs
16 of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding
17 (i) a plan for the orderly transfer of budget and related authority from the Administrative Office
18 of the Courts to the Commission on Prosecution Services, effective July 1, 2010; (ii) the rules,
19 standards, and other regulations developed by the Commission for the delivery of prosecution
20 services; and (iii) other matters for implementation of the provisions of this act.

21 **SECTION 17.** This act becomes effective July 1, 2010.