

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

S

1

SENATE BILL 816\*

Short Title: Office of Prosecution Services. (Public)

Sponsors: Senators Brunstetter and Rand.

Referred to: Judiciary I.

March 25, 2009

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.

36 (d) The budget of the Office of Prosecution Services shall be a part of the Judicial  
37 Department's budget. The Commission on Prosecution Services shall consult with the Director



1 of the Administrative Office of the Courts, who shall assist the Commission in preparing and  
2 presenting to the General Assembly the Office's budget, but the Commission shall have the  
3 final authority with respect to preparation of the Office's budget and with respect to  
4 representation of matters pertaining to the Office before the General Assembly.

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

8 **"§ 7A-83. Responsibilities of the Office of Prosecution Services.**

9 The Office shall be responsible for:

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

23 **"§ 7A-84. Establishment of the Commission on Prosecution Services.**

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

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

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

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

- 46 (1) The initial appointments by the Chief Justice shall be for four years.
- 47 (2) The initial appointments by the Governor shall be for three years.
- 48 (3) The initial appointments of active district attorneys by the General Assembly  
49 and the initial appointment by the North Carolina State Bar shall be for two  
50 years.

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

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

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

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

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

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

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

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

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

31           (k) The Commission shall hold its first meeting no later than September 15, 2009. All  
32           appointments to the Commission shall be made by the appointing authorities by September 1,  
33           2009. An appointee of the Chief Justice, to be designated at the time of appointment, shall  
34           convene the first meeting. At that first meeting, the Commission shall elect its chair.

35 **"§ 7A-85. Responsibilities of the Commission on Prosecution Services.**

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

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

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

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

48           (2) Standards prescribing minimum experience, training, and other  
49           qualifications for assistant district attorneys;

50           (3) Standards for assistant district attorney caseloads;

51           (4) Standards for the performance of assistant district attorneys;

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

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

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

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

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

18          **§ 7A-86. Director of Prosecution Services.**

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

24          (b)   The Director shall:

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

43          (c)   In lieu of merit and other increment raises paid to regular State employees, the  
44          Director of Prosecution Services shall receive as longevity pay an amount equal to four and  
45          eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations  
46          Appropriations Act payable monthly after five years of service, nine and six-tenths percent  
47          (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of  
48          service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four  
49          percent (24%) after 25 years of service. "Service" means service as Director of Prosecution  
50          Services, a public defender, appellate defender, assistant public or appellate defender, district

1 attorney, assistant district attorney, justice or judge of the General Court of Justice, or clerk of  
2 superior court."

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

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

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

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

17 "**§ 7A-64. Temporary assistance for district attorneys.**

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

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

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

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

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

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

47 "(d) In lieu of merit and other increment raises paid to regular State employees, an  
48 assistant district attorney 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 an assistant district  
3 attorney, district attorney, resource prosecutor, public defender, appellate defender, assistant  
4 public or appellate defender, justice or judge of the General Court of Justice, or clerk of  
5 superior court. For purposes of this subsection, "resource prosecutor" means a former assistant  
6 district attorney who has left the employment of the district attorney's office to serve in a  
7 specific, time-limited position with the ~~Conference of District Attorneys~~; Commission on  
8 Prosecution Services."

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

10 **"§ 7A-343. Duties of Director.**

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

13 ...

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

18 ...."

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

20 **"§ 7A-347. Assistants for administrative and victim and witness services.**

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

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

32 **"§ 7A-348. Training and supervision of assistants for administrative and victim and**  
33 **witness services.**

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

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

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

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

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

44 "(b) Upon authorization by the ~~Administrative Office of the Courts~~, Office of  
45 Prosecution Services, a district attorney may establish a program for the collection of worthless  
46 checks in cases that may be prosecuted under G.S. 14-107. The district attorney may establish a  
47 program for the collection of worthless checks in cases that would be punishable as  
48 misdemeanors, in cases that would be punishable as felonies, or both. The district attorney shall  
49 establish criteria for the types of worthless check cases that will be eligible under the program."

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

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

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

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

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

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

36       "**§ 15A-1475. Reports.**

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

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

- 47       "(8) One representative from the ~~Conference of District Attorneys of North~~  
48 ~~Carolina,~~ Commission on Prosecution Services, as appointed by the Speaker  
49 of the House of Representatives."

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

1                    "b.     One member who is a district attorney or an assistant district attorney  
2                    upon the recommendation of the Conference of District Attorneys of  
3                    North Carolina, for a term beginning July 1, 1998, and expiring June  
4                    30, 1999. For the term beginning July 1, 2011, this appointment shall  
5                    be made upon the recommendation of the Commission on  
6                    Prosecution Services."

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

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

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

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