

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1766

Short Title: Statewide Crim. Justice Truth Commission.

(Public)

Sponsors: Representatives Wright; and Luebke.

Referred to: Judiciary I.

May 31, 2004

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A STATEWIDE CRIMINAL JUSTICE TRUTH
3 COMMISSION, TO ESTABLISH LOCAL COMMISSIONS FOR CERTAIN
4 JUDICIAL DISTRICTS, AND TO APPROPRIATE FUNDS TO IMPLEMENT
5 THIS ACT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 7A of the General Statutes is amended by adding a
8 new article to read:

9 "Article 9A.

10 "North Carolina Criminal Justice Truth Commission.

11 "**§ 7A-69.5. North Carolina Criminal Justice Truth Commission.**

12 (a) There is established the North Carolina Criminal Justice Truth Commission.
13 The Commission shall consist of eight members as follows: one superior court judge
14 and one district court judge, each appointed by the Chief Justice of the Supreme Court;
15 one district attorney and one public defender or defense attorney, each appointed by the
16 Governor; four members of the State Bar who have actively practiced in the courts of
17 the State for at least 10 years, two appointed by the Speaker of the House of
18 Representatives and two appointed by the President Pro Tempore of the Senate. The
19 superior court judge shall act as Chair of the Commission and shall set the time and
20 place of the meetings.

21 (b) Terms of Commission members shall be for six years, except that, to achieve
22 overlapping of terms, one of the judges, the public defender, one of the practicing
23 members of the State Bar appointed by the Speaker of the House of Representatives,
24 and one of the members of the State Bar appointed by the President Pro Tempore of the
25 Senate shall be appointed initially for a term of only three years. No member who has
26 served a full six-year term is eligible for reappointment. If a member ceases to have the
27 qualifications required for appointment, then he or she ceases to be a member.
28 Vacancies are filled in the same manner as the original appointment for the remainder of
29 the term. Members are entitled to per diem and all members are entitled to

1 reimbursement for travel and subsistence expenses at the rate applicable to members of
2 State boards and commissions generally, for each day engaged in official business.

3 **"§ 7A-69.6. Powers and duties.**

4 (a) The duty of the Commission shall be to receive claims of prosecutorial
5 misconduct, to investigate every credible claim of prosecutorial misconduct, and to take
6 appropriate legal actions to remedy those claims that are meritorious.

7 (b) The Commission shall have the following powers:

8 (1) To receive complaints alleging prosecutorial misconduct.

9 (2) To investigate any alleged prosecutorial misconduct coming to its
10 attention and to determine whether probable cause exists that
11 prosecutorial misconduct has occurred.

12 (3) To subpoena witnesses and compel their attendance and to compel the
13 production of books, papers, and other documents deemed necessary
14 or material to the investigation.

15 (4) If the Commission determines that a reasonable belief exists that
16 prosecutorial misconduct did occur, to appoint an attorney for the
17 purpose of filing a motion for appropriate relief in the defendant's
18 benefit.

19 **"§ 7A-69.7. Procedures.**

20 Any citizen of the State may file a written complaint with the Commission
21 concerning an incident of alleged prosecutorial misconduct and thereupon the
22 Commission shall make such investigation, as it deems necessary. The Commission
23 may also make an investigation on its own motion. The Commission may issue process
24 to compel the attendance of witnesses and the production of evidence, to administer
25 oaths, to punish for contempt, and to prescribe its own rules of procedure. Testimony
26 and other evidence presented to the Commission are privileged in any action for
27 defamation. A majority of the members of the Commission must concur in any finding
28 of prosecutorial misconduct and the direction to file a motion for appropriate relief on
29 behalf of the defendant.

30 **"§ 7A-69.8. Commission counsel and executive secretary.**

31 The Commission may appoint a counsel to serve at the pleasure of the Commission.
32 The counsel must be a member of the North Carolina State Bar, but shall not be
33 permitted to engage in the private practice of law. The Commission may also hire an
34 executive secretary. The executive secretary shall serve at the pleasure of the
35 Commission.

36 **"§ 7A-69.9. Organization of judicial district criminal justice truth commissions.**

37 (a) Individual judicial districts may also establish local criminal justice truth
38 commissions as provided by this section. Any judicial district which has more than 100
39 licensed attorneys as determined by the North Carolina State Bar's records may
40 establish a judicial district criminal justice truth commission as provided by this section.
41 A judicial district with fewer than 100 licensed attorneys may establish a district
42 criminal justice truth commission with consent of the North Carolina Criminal Justice
43 Truth Commission. One or more judicial districts, including those with fewer than 100
44 licensed attorneys, may also establish a multidistrict criminal justice truth commission

1 as provided by this section. The multidistrict commissions shall be subject to all of the
2 provisions set out in this section and all references to district commissions in this
3 section shall also apply to multidistrict commissions.

4 (b) Creation of District Criminal Justice Truth Commissions. – A judicial district
5 may establish a district commission at a duly called meeting of the judicial district bar,
6 at which a quorum is present, upon the affirmative vote of a majority of the active
7 members present. Within 30 days of the election, the president of the judicial district bar
8 shall certify in writing the establishment of the district commission to the executive
9 secretary of the North Carolina Criminal Justice Truth Commission. A multidistrict
10 commission may be established by affirmative vote of a majority of the active members
11 of each participating judicial district present at a duly called meeting of each
12 participating judicial district bar, at which a quorum is present. Within 30 days of the
13 election, the chairperson of the multidistrict commission shall certify in writing the
14 establishment of the district commission to the executive secretary of the North Carolina
15 Criminal Justice Truth Commission. The active members of each participating judicial
16 district may adopt a set of bylaws not inconsistent with these rules by majority vote of
17 the active members of each participating judicial district present at a duly called
18 meeting of each participating judicial district bar at which a quorum is present. The
19 chairperson of the multidistrict commission shall promptly provide a copy of the bylaws
20 to the executive secretary of the North Carolina Criminal Justice Truth Commission.

21 (c) Appointment of District Commission Members. – Each district commission
22 shall be composed of members who are active members in good standing both of the
23 judicial district bar to which they belong and of the North Carolina State Bar and shall
24 have a membership of at least 10 members. The membership of each district
25 commission shall also have a representative from each of the following: the district
26 attorney's office, the defense bar, a public defender or an attorney from the indigent
27 appointment list for felony cases. Initially, the North Carolina Criminal Justice Truth
28 Commission shall appoint seven members to the local commission based on
29 recommendations received from the president of the local bar. In addition to the
30 attorney members, each district commission may also include one to three public
31 members who have never been licensed to practice law in any jurisdiction to be
32 appointed by the president of the local bar. Public members shall not perform
33 investigative functions regarding allegations of prosecutorial misconduct but in all other
34 respects shall have the same authority as the attorney members of the district
35 commission. The chairperson of the district commission shall be selected by the
36 president of the judicial district and shall serve at his or her pleasure. Alternatively, the
37 chair may be selected and removed as provided in the district bar bylaws. The attorney
38 and public members of the district commission shall be selected by and serve at the
39 pleasure of the president of the judicial district bar and the chair of the district
40 commission. Alternatively, the district commission members may be selected and
41 removed as provided in the district bar bylaws.

42 The members of the district commission, including the chair, shall be appointed for
43 staggered three-year terms, except that the president and chair shall appoint some of the
44 initial committee members to terms of less than three years, to effectuate the staggered

1 terms. No member shall serve more than one term, without first having rotated off the
2 committee for a period of at least one year between three-year terms. Any member who
3 resigns or otherwise becomes ineligible to continue serving as a member shall be
4 replaced by appointment by the president of the judicial district bar and the chair of the
5 commission or as provided in the district bar bylaws as soon as practicable.

6 **"§ 7A-69.10. Duty and powers of the judicial district commissions.**

7 (a) A judicial district criminal justice truth commission may investigate
8 allegations of prosecutorial misconduct filed against prosecutors who live or practice
9 within the judicial district. The commission may also investigate any allegations
10 referred to it for investigation by the North Carolina Criminal Justice Truth
11 Commission. A complaint may be filed with the judicial commission by any person
12 against a prosecutor in the judicial district who is alleged to have committed an act of
13 prosecutorial misconduct.

14 (b) The commission may interview the complainant, the prosecutor against
15 whom the complaint is filed, and any other person who may have relevant information
16 regarding the allegation of misconduct.

17 (c) Upon completion of the investigation, the Commission shall file a written
18 report with the North Carolina Criminal Justice Commission. The report shall include
19 the Commission's findings of fact and recommendation as to whether the North
20 Carolina Criminal Justice Commission shall find probable cause of prosecutorial
21 misconduct and whether a motion for appropriate relief should be filed on behalf of the
22 defendant."

23 **SECTION 2.** There is appropriated from the General Fund to the North
24 Carolina Criminal Justice Truth Commission the sum of two hundred fifty thousand
25 dollars (\$250,000) for the 2004-2005 fiscal year to implement this act.