

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 670
Committee Substitute Favorable 4/25/17
Senate Judiciary Committee Substitute Adopted 6/13/18

Short Title: Protect Educational Property.

(Public)

Sponsors:

Referred to:

April 11, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE CRIMINAL PENALTY FOR COMMUNICATING A THREAT
3 OF MASS VIOLENCE ON EDUCATIONAL PROPERTY OR AT A PLACE OF
4 RELIGIOUS WORSHIP, TO PROVIDE FOR CONDITIONAL DISCHARGE OF
5 PERSONS CONVICTED OF THOSE OFFENSES WHEN THE OFFENSE IS
6 COMMITTED UNDER THE AGE OF TWENTY, AND TO REQUIRE A JUDGE TO SET
7 CONDITIONS OF RELEASE FOR THOSE OFFENSES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding
10 a new section to read:

11 "**§ 14-277.6. Communicating a threat of mass violence on educational property.**

12 (a) A person who, by any means of communication to any person or groups of persons,
13 threatens to commit an act of mass violence on educational property or at a curricular or
14 extracurricular activity sponsored by a school is guilty of a Class H felony.

15 (b) The definitions in G.S. 14-277.5 apply to this section."

16 SECTION 2. Article 35 of Chapter 14 of the General Statutes is amended by adding
17 a new section to read:

18 "**§ 14-277.7. Communicating a threat of mass violence at a place of religious worship.**

19 (a) A person who, by any means of communication to any person or groups of persons,
20 threatens to commit an act of mass violence at a place of religious worship is guilty of a Class H
21 felony.

22 (b) The following definitions apply to this section:

23 (1) Mass violence. – As defined in G.S. 14-277.5(a)(2).

24 (2) Place of religious worship. – Any church, chapel, meetinghouse, synagogue,
25 temple, longhouse, or mosque, or other building that is regularly used, and
26 clearly identifiable, as a place for religious worship."

27 SECTION 3. Article 35 of Chapter 14 of the General Statutes is amended by adding
28 a new section to read:

29 "**§ 14-277.8. Conditional discharge for first offenders under the age of 20 years.**

30 (a) Whenever any person who has not previously been convicted of any felony or
31 misdemeanor other than a traffic violation under the laws of the United States or the laws of this
32 State or any other state pleads guilty to or is guilty of a violation of G.S. 14-277.5, 14-277.6, or
33 14-277.7, and the offense was committed before the person attained the age of 20 years, the court
34 shall, without entering a judgment of guilt and with the consent of the defendant and the District



1 Attorney, defer further proceedings and place the defendant on probation upon such reasonable
2 terms and conditions as the court may require.

3 (b) If the court, in its discretion, defers proceedings pursuant to this section, it shall place
4 the defendant on supervised probation for not less than one year. In addition to any other
5 conditions of probation, the court shall require the defendant to complete a minimum of 30 hours
6 of community service, to obtain a mental health evaluation, and to comply with any treatment
7 recommended as a result of the mental health evaluation. Prior to taking any action to discharge
8 and dismiss under this section, the court shall make a finding that the defendant has no previous
9 criminal convictions. Upon fulfillment of the terms and conditions of the probation provided for
10 in this section, the court shall discharge the defendant and dismiss the proceedings against the
11 defendant.

12 (c) Discharge and dismissal under this section shall be without court adjudication of guilt
13 and shall not be deemed a conviction for purposes of this section or for purposes of
14 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and
15 dismissal under this section may occur only once with respect to any person. Disposition of a
16 case to determine discharge and dismissal under this section at the district court division of the
17 General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or
18 condition of the probation provided for in this section, the court may enter an adjudication of
19 guilt and proceed as otherwise provided.

20 (d) Upon discharge and dismissal pursuant to this section, the person may apply for an
21 order to expunge the complete record of the proceedings resulting in the dismissal and discharge,
22 pursuant to the procedures and requirements set forth in G.S. 15A-145.7.

23 (e) The clerk shall notify State and local agencies of the court's order as provided in
24 G.S. 15A-150."

25 **SECTION 4.** Article 5 of Chapter 15A of the General Statutes is amended by adding
26 a new section to read:

27 **"§ 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of**
28 **the offense of certain offenses.**

29 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
30 pursuant to G.S. 14-277.8, and the person was under 20 years of age at the time of the offense,
31 the person may apply to the court of the county where charged for an order to expunge from all
32 official records, other than the confidential files retained under G.S. 15A-151, all recordation
33 relating to the person's arrest, indictment or information, trial, finding of guilty, and dismissal
34 and discharge pursuant to this section. The applicant shall attach to the petition the following:

35 (1) An affidavit by the petitioner that he or she has been of good behavior during
36 the period of probation since the decision to defer further proceedings on the
37 offense in question and has not been convicted of any felony or misdemeanor
38 other than a traffic violation under the laws of the United States or the laws of
39 this State or any other state;

40 (2) Verified affidavits by two persons who are not related to the petitioner or to
41 each other by blood or marriage, that they know the character and reputation
42 of the petitioner in the community in which he or she lives, and that the
43 petitioner's character and reputation are good;

44 (3) An application on a form approved by the Administrative Office of the Courts
45 requesting and authorizing a name-based State and national criminal record
46 check by the Department of Public Safety using any information required by
47 the Administrative Office of the Courts to identify the individual and a search
48 of the confidential record of expunctions maintained by the Administrative
49 Office of the Courts. The application shall be filed with the clerk of superior
50 court. The clerk of superior court shall forward the application to the

Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that the person was under 20 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.

(b) No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction and Juvenile Justice, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the proceeding. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent."

SECTION 5. G.S. 15A-150(a) reads as rewritten:

"(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the petitions granted under this Article, any orders of expunction, and the names of the following:

- (1) Persons granted an expunction under this Article.
- (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
- (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-277.8, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14."

SECTION 6. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-534.7. Communicating a threat of mass violence; bail and pretrial release.

(a) In all cases in which the defendant is charged with communicating a threat of mass violence on educational property in violation of G.S. 14-277.6 or communicating a threat of mass violence at a place of religious worship in violation of G.S. 14-277.7, except as provided in

1 subsection (b) of this section, the judicial official who determines the conditions of pretrial
2 release shall be a judge. The judge shall direct a law enforcement officer or a district attorney to
3 provide a criminal history report for the defendant and shall consider the criminal history when
4 setting conditions of release. After setting conditions of release, the judge shall return the report
5 to the providing agency or department. No judge shall unreasonably delay the determination of
6 conditions of pretrial release for the purpose of reviewing the defendant's criminal history report.
7 The following provisions shall apply in addition to the provisions of G.S. 15A-534:

8 (1) Upon a determination by the judge that the immediate release of the defendant
9 will pose a danger of injury to persons and upon a determination that the
10 execution of an appearance bond as required by G.S. 15A-534 will not
11 reasonably assure that such injury will not occur, a judge may retain the
12 defendant in custody for a reasonable period of time while determining the
13 conditions of pretrial release.

14 (2) A judge may impose the following conditions on pretrial release:

15 a. That the defendant stay away from the educational property or place
16 of religious worship against which the threat was communicated.

17 b. That the defendant stay away from any other educational property or
18 place of religious worship unless permission to be present is granted
19 by the person in control of the property.

20 The conditions set forth in this subdivision may be imposed in addition to
21 requiring that the defendant execute a secured appearance bond.

22 (3) Should the defendant be mentally ill and dangerous to himself or herself or
23 others or a substance abuser and dangerous to himself or herself or others, the
24 provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

25 (b) A defendant may be retained in custody not more than 48 hours from the time of arrest
26 without a determination being made under this section by a judge. If a judge has not acted
27 pursuant to this section within 48 hours of arrest, the magistrate shall act under the provisions of
28 this section."

29 **SECTION 7.** This act becomes effective December 1, 2018, and applies to offenses
30 committed on or after that date.