

New Crime Covers Threats of Mass Violence at School

Author : Shea Denning

Categories : [Crimes and Elements](#), [Procedure](#)

Date : November 6, 2018

Schools across the country experienced a “[dramatic uptick](#)” in threats of school-related violence following the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida in February 2018. One set of researchers [reported](#) that in the thirty days after the Parkland shooting, threats and incidents of violence in schools nationally increased by more than 300 percent--from an average of 13.2 threats and incidents per day to 59.4 per day. The national trend played out [in North Carolina as well](#), with schools in several North Carolina counties [responding to several reported threats of violence in the weeks following](#) the Parkland massacre. When such threats were made, it wasn't always clear whether they amounted to a crime. The actions often were a poor fit for the two most obvious candidates: [communicating threats](#) (because the threat was not always communicated to the person threatened) and [making a false report concerning mass violence on educational property](#) (because it wasn't always clear that the person who made the threat had made a report that the person knew to be false).

The General Assembly responded last June to this gap in the criminal code by enacting a new crime, [communicating a threat of mass violence on educational property](#), effective for offenses committed on or after December 1, 2018.

How the bill became law. [House Bill 670](#) was first proposed in April 2017. The original version of the bill was more limited than its final version, simply creating the new crime of communicating a threat of mass violence on educational property. H 670 passed the House unanimously the same month it was introduced, but [stalled in the Senate](#) until 2018. An amended version of the legislation passed unanimously in the Senate in June 2018, was ratified, and was signed by the Governor on June 25, 2018.

Two new crimes. [S.L. 2018-72](#) (H 670) creates two new crimes: communicating a threat of mass violence on educational property (G.S. 14-277.6) and communicating a threat of mass violence at a place of religious worship (G.S. 14-277.7). Both are Class H felonies.

Communicating a threat of mass violence on educational property. New G.S. 14-277.6 makes it a crime to (1) by any means of communication, (2) to any person or groups of persons, (3) threaten to commit an act of mass violence on educational property or at a curricular or extracurricular activity sponsored by a school.

- **Mass violence** is defined as “[p]hysical injury that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.”
- **Educational property** is “[a]ny school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school.”
- **School** is a public or private school, community college, college, or university.

Communicating a threat of mass violence at a place of religious worship. New G.S. 14-277.7 makes it a crime to (1) by any means of communication, (2) to any person or groups of persons, (3) threaten to commit an act of mass violence at a place of religious worship.

- **A place of religious worship** is “[a]ny church, chapel, meetinghouse, synagogue, temple, longhouse, or mosque, or other building that is regularly used, and clearly identifiable, as a place for religious worship.”

And a conditional discharge. Before the Senate took up consideration of H 670, the News and Observer [reported](#) that some members of the [House Select Committee on School Safety](#) “raised concerns last week about making the penalty for a school threat a felony because it could follow a student for the rest of his or her life.” The final version of the legislation addresses that concern by making certain persons convicted of a violation of G.S. 14-277.5 (making a false report concerning mass violence on educational property), 14-277.6, or 14-277.7 eligible for a conditional discharge.

To be eligible, a defendant must not have previously been convicted of any felony or misdemeanor other than a traffic violation and must have committed the offense before he or she was 20 years old. Jamie wrote about this new conditional discharge, codified in new G.S. 14-277.8, [here](#).

S.L. 2018-72 (H 670) also enacts a corresponding expunction provision, permitting an expungement of the complete record of the proceedings that resulted in dismissal and discharge under G.S. 14-277.8. My colleague John Rubin, our resident expunction expert, may have more to say about these provisions [when he returns from across the pond](#). Some of the provisions are curious. At one juncture, new G.S. 15A-145.7 states that the judge to whom the expunction petition is presented may call upon a probation officer for additional investigation or verification of the petitioner’s conduct during the probationary period. Yet, the statute then states that if the court determines that the “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 the expunction order. Thus, it is unclear what discretion the court has regarding the expunction if it learns of unfavorable conduct by the petitioner during the probationary period.

Conditions of pretrial release. Finally, new G.S. 15A-534.7 provides that only a judge may set conditions of pretrial release for a defendant charged with a violation of G.S. 14-277.6 or G.S. 14-277.7 within the first 48 hours following the defendant’s arrest.

Like the [48-hour-rule for certain domestic violence crimes](#), G.S. 15A-534.7 directs the judge to consider the defendant’s criminal history. It also permits the judge to hold the defendant “for a reasonable period of time while determining conditions of pretrial release” if the judge finds that the immediate release of the defendant poses a danger that is not abated by the execution of a bond.

In addition to requiring a secured bond, a judge may order the defendant to stay away from the educational property or place of religious worship that he or she threatened and may order the defendant to stay away from any other educational property or place of religious worship unless the defendant has permission to be on the property.

If a judge has not acted within 48 hours, a magistrate must set conditions of pretrial release in accordance with these provisions.

Want more details? Troy Page, Assistant Legal Counsel for the Administrative Office of the Courts, circulated [this](#) thorough memorandum on Friday, explaining the act and describing the AOC forms that will be amended and created to implement its provisions.

Will it work? The president of the North Carolina School Boards Association [suggested earlier this year](#) that the enactment of H 670 would deter threats of violence on school property. Perhaps it will. What we do know for certain is that if a person threatens to commit mass violence at a school in North Carolina on or after December 1, 2018, those actions will amount to a felony.