



ADMINISTRATIVE OFFICE OF THE COURTS

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**MEMORANDUM**

TO: Superior Court Judges  
District Court Judges  
Magistrates  
Clerks of Superior Court  
District Attorneys  
Public Defenders

FROM: Troy D. Page  
Assistant Legal Counsel

DATE: November 2, 2018

SUBJECT: 2018 Legislation - Threats of Mass Violence - S.L. 2018-72 (HB 670)<sup>1</sup>

In its 2018 session, the General Assembly enacted S.L. 2018-72 (HB 670, Protect Educational Property),<sup>2</sup> creating two new criminal offenses for communicating threats of “mass violence”<sup>3</sup> toward schools and religious facilities and setting limitations on pretrial release for the new offenses. The act also creates a new conditional discharge and a new expunction statute for the new offenses and one existing offense. The two new offenses and the procedural changes discussed below are effective for offenses committed on or after December 1, 2018.

**I. New Offenses - Threats of Mass Violence**

Sections 1 and 2 of S.L. 2018-72 enact new Class H felonies for persons who communicate threats of “mass violence” on educational property or at a school’s curricular or extracurricular activity, G.S. 14-277.6, or at a place of religious worship, G.S. 14-277.7.<sup>4</sup>

**II. Pretrial Release - New 48-Hour, Judge-Only Provision**

Section 6 of S.L. 2018-72 enacts new G.S. 15A-534.7, imposing limitations on setting conditions of release for charges of the two new offenses. The new G.S. 15A-534.7 is procedurally identical to G.S. 15A-534.1’s limitations on pretrial release for certain domestic violence offenses:

- for the first 48 hours after arrest, only a judge may set conditions of release;
- if a judge has not acted within 48 hours, a magistrate sets the conditions;
- the district attorney or a law enforcement officer must provide a criminal history for consideration in setting conditions, but conditions may not be delayed unreasonably while awaiting the report, and the report must be returned to the submitting DA or officer afterward (not placed in the case file);
- the court may impose additional conditions (listed in the new statute) that the defendant stay away from certain educational and religious facilities;

<sup>1</sup> For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)’s Juno site for Judicial Branch users at <https://juno.nccourts.org/legal-memos/>, under the memo list for Criminal Memos.

<sup>2</sup> Full text of the enacted bill is available at <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H670v5.pdf>.

<sup>3</sup> Defined in the existing G.S. 14-277.5.

<sup>4</sup> There will be no dedicated offense codes initially for the two new offenses. The NCAOC generally does not create codes for new offenses, until the volume of charges indicates a need for an offense-specific code. Charges for the two new offenses should be entered under code 5399 (PUBLIC PEACE - FREE TEXT).



- upon finding that the defendant’s immediate release “will pose a danger of injury to persons” and that an appearance bond will not reasonably assure that such injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining conditions of release; and
- if the defendant is (i) mentally ill or a substance abuser and (ii) a danger to self or others, any commitment for that condition would be pursuant to Article 5 of Chapter 122C.<sup>5</sup>

Form AOC-CR-200 (Conditions of Release and Release Order) will be updated effective December 1, amending the existing check-box option for G.S. 15A-534.1 to apply also to the new G.S. 15A-534.7. The NCAOC also will publish a new addendum form, AOC-CR-660 (Conditions of Release for Person Charged with Threat of Mass Violence), to impose the additional conditions of release authorized under G.S. 15A-534.7 when incorporated by reference on the AOC-CR-200.<sup>6</sup>

### III. New Conditional Discharge<sup>7</sup>

Section 3 of S.L. 2018-72 enacts G.S. 14-277.8, a new conditional discharge statute for defendants convicted under (i) either of the two new offense statutes or (ii) the existing G.S. 14-277.5 (false report of mass violence on educational property).<sup>8</sup> The new conditional discharge will be available upon conviction only if the defendant was under 20 years of age as of the date of offense and has no prior convictions for any felony or misdemeanor other than a traffic violation.

The new statute’s procedural features generally are the same as other conditional discharges, *e.g.*, G.S. 90-96, with only a few variations. Probation under the new G.S. 14-277.8 must be supervised and for “not less than one year” (but capped at two years, G.S. 15A-1342(a)). In addition to any other conditions of probation imposed, the court must require that the defendant complete at least 30 hours of community service and obtain a mental health evaluation (and comply with any recommended treatment).

The NCAOC will publish a new probation form for G.S. 14-277.8, the AOC-CR-636D, effective December 1.<sup>9</sup> Discharge and dismissal under G.S. 14-277.8 “may occur only once with respect to any person,” so an option will be added to form AOC-CR-237 (Request for Report of Conditional Discharge) for pre-deferral checks of the NCAOC’s confidential index of conditional discharges. Upon a defendant’s successful discharge and dismissal, the clerk must report the dismissal to the NCAOC, pursuant to G.S. 15A-150.<sup>10</sup>

<sup>5</sup> As with the substantively-identical provision in G.S. 15A-534.1, any proceedings for the defendant’s involuntary commitment would be a separate special proceeding (SPC) from the criminal case.

<sup>6</sup> The new AOC-CR-660 is designed to be used for charges of the two new offenses subject to G.S. 15A-534.7 in the same manner as the AOC-CR-630 (Conditions of Release for Person Charged with a Crime of Domestic Violence) is used for G.S. 15A-534.1. The AOC-CR-660 should not be used as a standalone form for setting conditions of release; it should be used only as an addendum to the AOC-CR-200.

<sup>7</sup> For additional discussion of the new conditional discharge, including some ambiguity about whether the conditional discharge for an eligible defendant is mandatory or discretionary, see Jamie Markham, *Another New Conditional Discharge: Threats and False Reports of Mass Violence*, N.C. Crim. L., UNC Sch. of Gov’t Blog (Jul. 12, 2018), <https://nccriminalaw.sog.unc.edu/another-new-conditional-discharge-threats-and-false-reports-of-mass-violence>.

<sup>8</sup> G.S. 14-277.5 is eligible for the new conditional discharge (and resulting expunction), but it does not trigger the 48-hour limitation on pretrial release discussed in section II. The 48-hour provision applies only to the two new offenses under G.S. 14-277.6 and 14-277.7.

<sup>9</sup> There will be only a “D” version of the AOC-CR-636, because the new G.S. 14-277.8 is effective only for offenses committed on or after December 1, 2018. The A through C versions of the probation forms apply only to offense dates in earlier years.

<sup>10</sup> Successful discharge and dismissal should be entered on form AOC-CR-635 (Disposition/Modification Of Conditional Discharge). Unsuccessful conditional discharges, *i.e.*, those for which probation is revoked and a true judgment of conviction entered, do not need to be reported to the NCAOC.



#### IV. Expunction of Discharged/Dismissed Charges

Section 4 of S.L. 2018-72 enacts a new expunction provision, G.S. 15A-145.7. The new expunction will be available only to defendants who were successfully discharged and dismissed pursuant to the new G.S. 14-277.8, discussed above. As with most expunction statutes, the new G.S. 15A-145.7 will require: a petition to the court; affidavits of the petitioner's behavior and character; a criminal record check by the Department of Public Safety (DPS) and prior expunction record check by the NCAOC;<sup>11</sup> a \$175.00 filing fee (waivable for indigents);<sup>12</sup> and reporting of granted expunctions to the NCAOC for entry into the confidential index maintained pursuant to G.S. 15A-150.<sup>13</sup>

A petition under G.S. 15A-145.7 must be filed "on a form approved by the Administrative Office of the Courts," so a new form for the petition and the court's resulting order, AOC-CR-289 (and accompanying instruction sheet, the AOC-CR-289I) will be published and available at [nccourts.gov](http://nccourts.gov) on December 1.

#### V. Conclusion

Court officials with questions about the new offenses, pretrial release provision, or conditional discharge discussed above should feel free to contact me at [Troy.D.Page@nccourts.org](mailto:Troy.D.Page@nccourts.org) or at 919-890-1323. Questions about the new expunction provision may be directed to [LaToya.B.Powell@nccourts.org](mailto:LaToya.B.Powell@nccourts.org) or 919-890-1321. Questions about the use of NCAOC's automated systems, forms, and recordkeeping procedures should be directed to the NCAOC's Training & Development Field Support Analysts for the official's county.<sup>14</sup> Law enforcement officers and officials of other agencies external to the Judicial Branch with questions about the impact of S.L. 2018-72 should consult their respective counsel; counsel for the NCAOC cannot provide legal advice to entities outside the Judicial Branch.

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<sup>11</sup> It is unclear why a check of prior expunction records is required. The only criteria for grant of the new expunction are (i) a successful discharge and dismissal under G.S. 15A-277.8, and (ii) the defendant's age at the time of the offense (*i.e.*, under 20). Prior expunctions are not a bar to relief under the new G.S. 15A-145.7. However, the statute requires the prior expunction check, so the NCAOC's petition and order form requests the record check from the NCAOC in addition to the criminal record check by DPS.

<sup>12</sup> The fee is disbursed to DPS (\$122.50) and to the NCAOC (\$52.50) to cover the costs of the record checks. Clerks should receipt the fee for the new G.S. 15A-145.7 to the EXP related code, which distributes the fee to the appropriate accounts.

<sup>13</sup> The new G.S. 15A-145.7(b) will provide that the defendant shall not be deemed to have given a false statement in any context by failing to acknowledge the expunged record, but this right of non-disclosure "shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense" (matching a 2017 amendment to other statutes for the expunction of convictions). However, S.L. 2018-72 did not add the new G.S. 15A-145.7 to G.S. 15A-151.5's provision for the district attorney's access to such records. Unless and until that additional statute is amended, district attorneys will not have access to records of expunctions under G.S. 15A-145.7. S.L. 2018-72 also did not amend G.S. 15A-151's provisions for disclosure of prior expunctions to certain law enforcement entities for the purposes of certification or employment, so records of expunctions under G.S. 15A-145.7 will not be available to those entities.

<sup>14</sup> A directory of field support staff by county and district is available to Judicial Branch personnel on Juno, currently posted at <https://juno.nccourts.org/sites/default/files/Directoreries%20Files/county-district-field-assignments.pdf>.

