

Direct Criminal Contempt

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UNC School of Government

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- I am considering holding you in direct criminal contempt for ... [briefly describe the conduct]. **Is there anything you would like to say?**
- I find you to be in direct criminal contempt.
- I sentence you to
[12 hours, 24 hours, ... up to 30 days incarceration;
and/or
[\$50, \$200, ... up to \$500 fine; **and/or** a censure]

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Contempt authority
is statutory

[NC Gen. Stat. Chapter 5A](#)
Criminal Contempt
Civil Contempt
Contempt by Juveniles

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CRIMINAL

To **punish** for an act
already committed

G.S. 5A-11 to 5A-17

CIVIL

To **coerce** compliance
with court order

G.S. 5A-21 to 5A-26

Criminal contempt - Grounds

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
- (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.
- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.
- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.
- (7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
- (9a) Willful refusal by a defendant to comply with a condition of probation.
- (9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 34 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisor's sentence.
- (10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11(a)

Criminal contempt - Grounds

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G.S. 5A-11(a)

Criminal contempt - Grounds

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

Examples:

- Attorney repeatedly demanding to be heard (after warnings to stop) and inciting his purported client to disrupt proceedings. *In re Nakell* (1991).
- Mobile phone ringing? See *State v. Phair* (2008)

(9) Willful communication with a juror in an improper attempt to influence his deliberations.
(9a) Willful refusal by a defendant to comply with a condition of probation.
(9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 34 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisor's sentence.
(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11



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Criminal contempt - Grounds

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

Examples:

- Yelling at/insulting the judge.
- Coming to court drunk. *State v. Ford* (2004)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

(9a) Willful refusal by a defendant to comply with a condition of probation.
(9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 34 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisor's sentence.
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G.S. 5A-11



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Criminal contempt - Grounds

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

Examples:

- Attempting to coerce witness not to obey subpoena. *State v. Wall* (1980)
- Disobeying order to turn over control of assets to receiver. *Osmar* (1979)
- Disobeying order to keep children away from sex offender. *State v. Mastor* (2015)
- Juror conducting own investigations. *State v. Pierce* (1999)

(9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 34 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisor's sentence.
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G.S. 5A-11



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Criminal contempt - Punishment

- Imprisonment up to 30 days;
- Censure; *and/or*
- Fine up to \$500

Suspended sentences allowed with conditions.
-*State v. Key* (2007)
If appealed, bail hearing required.
-5A-17

Judicial Official can withdraw or reduce a sentence any time "if warranted by the conduct of the contemnor and the ends of justice."
-5A-12(c)



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Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

Plenary proceeding

- All indirect contempt
- Direct contempt (at option of the Judicial Official)



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Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

"Direct criminal contempt" is act of contempt committed:

- Within sight or hearing of presiding judicial official; *and*
- In, or in immediate proximity to, room where proceedings are being held; *and*
- Likely to interrupt or interfere with matters before the court.

Summary proceeding appropriate "when necessary to restore order or maintain dignity and authority of the court."



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- YOU will be the only witness.
- Can you provide all the facts from your personal observation?

Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

1. Judge gives person summary notice of charges
2. Judge must give "summary opportunity to respond."



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Criminal Contempt - Procedure

"summary opportunity to respond"

"...[i]ntended not to provide for a hearing, or anything approaching that...but merely to assure that the alleged contemnor had an opportunity to point out instances of gross mistake about who committed the contemptuous act or matters of that sort." -Official commentary to SA-14 (quoted often in cases)





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“Summary opportunity to respond”

In re Korfmann, 786 S.E.2d 768
(N.C. App. 2016).

Trial judge:

This Court takes the strong position that technology is not to be utilized by jurors and, in fact, this jury has been warned several times not to use.

In my opinion the utilization by the juror is blatantly disrespecting the Court's order not to use.

Sir, I think that what I am going to do with you is I am going to send you to Wilson County Jail for 30 days for failing to follow the order given to you by this Court.

The ladies and gentlemen of this jury are now excused. You can get a certificate as to where you have been for the last several days. You are excused.

This gentleman is in your custody.

Court of Appeals:

Contempt order VACATED:

“The trial court did not give appellant the necessary ‘summary notice of the charges and a summary opportunity to respond[.]”



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State v. Robinson, 281 NC App 614 (2022)

- Defendant: “Look at the messages on my cell phone.”
- Magistrate: “If you do not remove the cell phone from the courtroom, I will hold you in contempt.”
- Defendant: “But here are all the reasons you should look at my cell phone”
- Magistrate enters order of direct criminal contempt



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Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

1. Judge gives person summary notice of charges
2. Judge must give “summary opportunity to respond.”
3. Judge finds facts supporting summary imposition of measures.
 - Must find willfulness.
 - Must state facts found “beyond reasonable doubt.”



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AOC-CR-390

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Criminal contempt - Procedure

- **Show cause order**
 - Must state facts upon which order is based.
 - Form: AOC-CR-219
- **Hearing (non-jury trial)**
 - Burden of proof on State
 - Beyond a reasonable doubt
 - Indigent entitled to counsel
 - Self-incrimination protection applies.
- **Order**
 - Guilty or not guilty
 - Findings of fact required.
 - Must find willfulness (or prior warning).
 - Must state "beyond reasonable doubt."

Plenary proceeding

- All indirect contempt
- Direct contempt (at option of Judicial Official)

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AOC-CR-219

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Appeal

Clerk of Court → Superior Court
(*de novo* appeal)

- Bail hearing required when contemnor appeals
- District court judge sets release conditions
 - Hearing must be held within 24 hours
 - If not held within 24 hours, any judicial official shall conduct the bond hearing.

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Stay calm, take a deep breath, and say.....

- I am considering holding you in direct criminal contempt for ... [briefly describe the conduct]. **Is there anything you would like to say?**
- I find you to be in direct criminal contempt.
- I sentence you to
[12 hours, 24 hours, ... up to 30 days incarceration; **and/or**
[\$50, \$200, ... up to \$500 fine; **and/or**
[a censor]

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Should I?

Some alternatives:

- Ignore and move on.
- Admonish and move on.
- If the person is not a party, instruct him or her to leave.
- Take a break. (Hit the reset button.)
- Order person “retrained” for short period of time before summary proceedings. **5A-16(a)**.

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