

Article 3.
Contempt by Juveniles.

§ 5A-31. Contempt by a juvenile.

(a) Each of the following, when done by an unemancipated minor who (i) is at least six years of age, (ii) is not yet 16 years of age, and (iii) has not been convicted of any crime in superior court, is contempt by a juvenile:

- (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 or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (6) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A of the General Statutes, Granting of Immunity to Witnesses.
- (7) Willful communication with a juror in an improper attempt to influence the juror's deliberations.
- (8) Any other act or omission specified in another Chapter of the General Statutes as grounds for criminal contempt.

(b) Contempt by a juvenile is direct contempt by a juvenile when each of the following conditions is met:

- (1) The act is committed within the sight or hearing of a presiding judicial official.
- (2) The act is committed in, or in the immediate proximity to, the room where proceedings are being held before the court.
- (3) The act is likely to interrupt or interfere with matters then before the court.

(c) Contempt by a juvenile that is not direct contempt by a juvenile is indirect contempt by a juvenile. (2007-168, s. 1.)

§ 5A-32. Direct contempt by a juvenile.

(a) A presiding judicial official may summarily impose measures in response to direct contempt by a juvenile when necessary to restore order or maintain the dignity and authority of the court and when the measures are imposed substantially contemporaneously with the contempt. Before imposing measures summarily, the judicial official shall do all of the following:

- (1) Give the juvenile summary notice of the contempt allegation and a summary opportunity to respond.
- (2) Appoint an attorney to represent the juvenile and allow time for the juvenile and attorney to confer.
- (3) Find facts supporting the summary imposition of measures in response to contempt by a juvenile. The facts shall be established beyond a reasonable doubt.

(b) When a judicial official chooses not to proceed summarily, the official may enter an order appointing counsel for the juvenile and directing the juvenile to appear before a judge in a

juvenile proceeding at a reasonable time specified in the order and show cause why the juvenile should not be held in contempt. A copy of the order shall be furnished to the juvenile and to the juvenile's attorney. If the direct contempt by a juvenile is based on acts before a judge that so involve the judge that the judge's objectivity may reasonably be questioned, the order shall be returned before a different judge presiding in juvenile court.

(c) After a determination is made pursuant to subsection (a) or (b) of this section that a juvenile has committed direct contempt, the court may order any or all of the following:

- (1) That the juvenile be detained in a juvenile detention facility for up to five days.
- (2) That the juvenile perform up to 30 hours of supervised community service as arranged by a juvenile court counselor.
- (3) That the juvenile be required to undergo any evaluation necessary for the court to determine the needs of the juvenile.

The court shall not impose any of these sanctions without finding first that the juvenile's act or omission was willfully contemptuous or that the act or omission was preceded by a clear warning by the court that the conduct is improper.

(d) A judicial official who finds a juvenile in direct contempt may at any time terminate or reduce a sanction of detention or eliminate or reduce the number of hours of community service ordered if warranted by the juvenile's conduct and the ends of justice.

(e) A judicial official may orally order that a juvenile the official is charging with direct contempt be taken into custody and restrained to the extent necessary to assure the juvenile's presence for summary proceedings or notice of plenary proceedings.

(f) The clerk shall place a copy of any order or other paper issued pursuant to this section in the juvenile's juvenile file, if one exists, or in a new juvenile file.

(g) Appeal from an order finding a juvenile in direct contempt is to the Court of Appeals. (2007-168, s. 1.)

§ 5A-33. Indirect contempt by a juvenile.

Indirect contempt by a juvenile may be adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes. (2007-168, s. 1.)

§ 5A-34. When minor can be in contempt.

(a) No act or omission by a minor younger than six years of age constitutes contempt.
(b) The provisions of Article 1 and Article 2 of this Chapter apply to acts or omissions by a minor who:

- (1) Is 16 years of age or older;
- (2) Is married or otherwise emancipated; or
- (3) Before the act or omission, was convicted in superior court of any criminal offense. (2007-168, s. 1.)

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When Can Juveniles Be Held in Contempt?



This entry was contributed by LaToya Powell on March 25, 2015 at 5:00 am and is filed under Child Welfare Law, Civil Law, Civil Practice, Family Law, Juvenile Justice.

Juveniles, like adults, may be held in contempt for disrespecting the court or interfering with the proper administration of justice. Consider the actions of the juveniles in the following cases: (1) Evan, age 14, was adjudicated delinquent for simple possession of marijuana. At the disposition hearing, the judge asked Evan, "Where do you get your marijuana?" and he refused to answer. Although the judge repeated this question several times, he still refused to answer. (2) Kim, age 15, was adjudicated as an undisciplined juvenile for habitual, unlawful absences from school. The terms of her protective supervision order required her to attend school every day, but she has repeatedly skipped school, since the disposition hearing. May either juvenile be held in contempt? The short answer is yes.

Contempt by a Juvenile. The following acts constitute "contempt by a juvenile" when committed by unemancipated minors between the ages of 6 and 15 (see statute for complete list): (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; and (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution. G.S. 5A-31(a). Accordingly, a juvenile's willful refusal to answer a judge's question or willful noncompliance with a court order may constitute contempt by a juvenile.

Direct Contempt. Contempt may be direct or indirect. Pursuant to G.S. 5A-31(b), contempt is *direct contempt by a juvenile* when all of the following conditions are met:

1. The act is committed within the sight or hearing of a presiding judicial official;
2. The act is committed in, or in the immediate proximity to, the room where proceedings are being held before the court; and
3. The act is likely to interrupt or interfere with matters then before the court.

That is, the contemptuous behavior must occur in the judge's immediate presence or hearing, while court is in session. Some examples of direct contempt might include a willful refusal to answer a judge's question, using profanity in court, fighting directly outside the courtroom, or refusing to be sworn or testify as a witness.

Direct Contempt Procedures. Direct contempt by a juvenile may be punished summarily (meaning immediately) to restore order in the court. *See In re Hennis*, 6 N.C. App. 683, 690 (1969). However, before proceeding summarily in response to direct contempt, the court must first follow the procedures outlined in G.S. 5A-32, which include:

1. Giving the juvenile summary notice and an opportunity to respond;
2. Appointing an attorney for the juvenile and allowing time for them to confer; and
3. Finding facts supporting the summary imposition of measures, which "shall be established beyond a reasonable doubt."

Before imposing sanctions for direct contempt, the court must also find that the juvenile's act was "willfully contemptuous or was preceded by a clear warning by the court that the conduct is improper." G.S. 5A-32(c).

In Evan's hypothetical, which is based on an actual NC case, the court of appeals vacated the contempt order because the trial court failed to give the juvenile summary notice and a summary opportunity to respond before holding him in direct contempt. *See In re E.M.*, __ N.C. App. __, 745 S.E.2d 374 (2013) (unpublished). Although a formal hearing is not required, the juvenile must be provided some prior notice of the contempt allegations and an opportunity to present reasons why the court should not impose a sanction.

As an alternative to summary proceedings, the court may appoint counsel for the juvenile and order the juvenile to appear for a show cause hearing to be held in juvenile court within a reasonable time specified in the order.

Indirect Contempt. Contempt that is not direct contempt is *indirect contempt by a juvenile*, which "may be adjudged and sanctioned only pursuant to the procedures in Subchapter II of Chapter 7B of the General Statutes." G.S. 5A-33. That is, indirect contempt by a juvenile is a delinquent act, subject to the same filing requirements and hearing procedures as any other allegation of delinquency. *See G.S. 7B-1501(7)*. And, a juvenile who is adjudicated delinquent for committing indirect contempt by a juvenile would be subject to the dispositional alternatives for delinquent juveniles.

The hypothetical involving Kim poses the question of whether an undisciplined juvenile may be charged with indirect contempt for willfully disobeying a court order. According to G.S. 5A-31(a) (3), the answer is yes. However, there are a couple reasons why discretion should be exercised in applying this statute to undisciplined juveniles.

First, the Juvenile Code has a specific statutory procedure to address violations of protective supervision by undisciplined juveniles, which aims to treat undisciplined juveniles differently than delinquent juveniles. G.S. 7B-2505. Also, the Juvenile Code previously authorized “contempt of court for undisciplined juveniles” in G.S. 7B-2505, but eliminated this sanction in 2012 when the statute was rewritten. S.L. 2012-172, s. 5.

So, how can the changes to G.S. 7B-2505 be reconciled with G.S. 5A-31? Apparently, while contempt of court is no longer authorized as an *immediate* sanction for a violation of protective supervision by an undisciplined juvenile, a juvenile delinquency petition for indirect contempt by a juvenile can be filed. Ultimately, lawmakers may need to address whether non-criminal, undisciplined behavior should result in a delinquency charge.

This entry was tagged with the following terms: contempt by a juvenile, Contempt of court, delinquent juvenile, direct contempt, indirect contempt, protective supervision, undisciplined juvenile.

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IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
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IN THE MATTER OF: _____)
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 [_____])

[Name]