

Contempt for Magistrates

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School of Government
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Contempt authority is statutory

NC Gen. Stat. Chapter 5A
Criminal Contempt
Civil Contempt
Contempt by Juveniles

2

<p>CRIMINAL</p> <p>To <i>punish</i> for an act already committed</p> <p>G.S. 5A-11 to 5A-17</p>	<p>CIVIL</p> <p>Magistrate has no authority</p> <p>To <i>compel</i> compliance with court order</p> <p>G.S. 5A-21 to 5A-24</p>
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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.
- (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 14 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 supervisee'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)

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Criminal contempt - Grounds

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- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, direction, or instruction or its execution.
- (4) Willful refusal to be sworn or affirmed as a witness, or with intent to obstruct or delay the trial, to answer any legal and proper question when the refusal is not legally justified.
- (5) Willful publication of a statement or information that is false and defamatory to a party in a proceeding, or that creates a danger of imminent and substantial interference with the proceedings, with reckless disregard of whether the statement or information is true or false.
- (6) Willful or gross negligence in the performance of a duty that results in substantial interference with the proceedings.
- (7) Willful or gross negligence in the performance of a duty that results in substantial interference with the proceedings.
- (8) Willful refusal to comply with the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity.
- (9) Willful communication to 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 14 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 supervisee'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)

Magistrates can only punish "direct" criminal contempt.

G.S. 7A-292(2)

"Direct" criminal contempt is 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.*

Criminal contempt - Grounds

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

EXECUTION:

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 14 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 supervisee'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

<http://nccriminallaw.sog.unc.edu>

Contempt and Cellphones

Posted on May 1, 2013, 9:11 am by Michael Crowell • 2 comments



A couple of this blog's recent Friday News Roundups have linked offbeat stories about contempt and cellphones. In the first a Michigan judge held himself in contempt and ordered a \$25 fine when his cellphone rang in court. The second story was the federal Sixth Circuit upholding a 30-day contempt sentence for a courtroom spectator caught texting in federal district court. Actually it was more than that, as he later admitted to also using his phone to photograph his friend being sentenced. After all, what are friends for?

Some readers might be wondering about contempt and cellphones in North Carolina courtrooms. In the Tar Heel state you might be held in contempt if your phone goes off, though not necessarily. Here is a brief primer on contempt and some observations about cellphones.

There are two kinds of contempt, civil and criminal. Civil contempt is used only when a person is currently disobeying a court order, and its only sanction is to lock up the person until they comply with the order. The most common example is the deadbeat father not paying child support. He does not get a set sentence; he stays in jail until he pays, and he gets out just as soon as he catches up on the support.

Criminal contempt can be for any of a number of behaviors listed in the statute. The most common are disrupting or showing disrespect for the court, not following the court schedule, refusing to testify. It's shouting at the judge, cursing, refusing to sit down, coming late to court — the stuff people usually think about when they hear the word "contempt." Refusing to obey a court order also may be criminal contempt, just as it may be civil contempt. But it can't be both, the judge has to choose one, either civil or criminal contempt. The difference between the two is that criminal contempt is used to punish the person for past behavior; civil contempt is used to get the person to comply. Criminal contempt carries a set punishment which can be a fine of up to \$500 and/or jail for up to 30 days; civil contempt is jail until the order is complied with.

The ringing cellphone in court, or texting or taking photos, would be criminal contempt, not civil.

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.

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger to the public peace.

Examples:

- Yelling at/insulting the judge.
- Coming to court drunk. *State v. Ford* (2004)
- Racial slur directed at court officer. *State v. Johnson* (2015) (unpub'd)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

(20) 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 14 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 supervisee'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

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.

"Courtroom decorum and function depends on the respect shown by its officers and those in attendance.

Unexcused refusal[] to stand creates a rift in that respect and interrupts the normal proceedings of the court."

- Racial slur directed at court officer. *State v. Johnson* (2015) (unpub'd)
- Refusal to rise/stand when directed. *State v. Randall* (2002)

(20) 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 14 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 supervisee's sentence.

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G.S. 5A-11

Criminal contempt - Grounds

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

disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

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)

of Chapter 21 of the General Statutes in "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 supervisee'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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- (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.

(6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

with the business of the court.

Examples:

- Attorney twice attempting to introduce polygraph results in criminal trial. *In re Cogdell* (2007)
- Attorney repeatedly failing to comply with Rape Shield Statute when questioning witness. *State v. Okwara* (2012)

(10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11

Criminal contempt - Grounds

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- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present

(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.

- (9) Willful communication with a juror in an improper attempt to influence his deliberations

Example:

- Attorney abandoned client just before probation hearing because hadn't been paid. *State v. Key* (2007)
- But, *State v. Chriscoe* (1987): Failure of witness to appear promptly at 9:30 was not violation of order because not subpoenaed, not disruptive to schedule.

Criminal contempt - Grounds

“[T]hat degree of interference with the court's business that is **real, and not momentary or illusory.**”

- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present

(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.

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Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

Plenary proceeding

- All indirect contempt
- Direct contempt (at court's option)

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.”

Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

1. Judge gives person summary notice of charges
2. Judge *must* give “summary opportunity to respond.”

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 5A-14 (quoted often in cases)

For an SOG instructional video see
<https://www.sog.unc.edu/courses/online-modules/contempt-court>



Video

Criminal contempt - Procedure

Summary proceeding

- Direct contempt only

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

AOC-CR-390

STATE OF NORTH CAROLINA

In the General Court of Justice
 County Before The Clerk District Superior Court Division

IN THE MATTER OF
 Name and Address of Contemnor

**DIRECT CRIMINAL CONTEMPT/
 SUMMARY PROCEEDINGS/
 FINDINGS AND ORDER**

G.S. 5A-11, -12, -13, -14

Age Sex Date of Birth Age
 Date Time AM PM Place

On the date, time and place of hearing as stated above, the undersigned judicial official conducted:
 an initial appearance a probable cause hearing a trial
 a first appearance an estates proceeding other
 a pre-trial motion hearing a special proceeding

The court finds beyond a reasonable doubt that during the proceeding the above contemnor willfully behaved in a contemptuous manner, in that the above named contemnor did

The undersigned gave a clear warning that the contemnor's conduct was improper. In addition, the contemnor was given summary notice of the charges and summary opportunity to respond. (NOTE: The contemnor should be given an opportunity to sign his/her behavior, however the contemnor is not entitled to counsel, if court promptly penalized act of contempt)
 The contemnor's conduct interrupted the proceedings of the court and impaired the respect due its authority. Therefore, it is adjudged that the above named contemnor is in contempt of court. It is ordered that the contemnor

NOTE TO COURT: If suspending a sentence for contempt, impose judgment on form AOC-CR-604.
 be sentenced for contempt. (max: \$500.00) shall pay the costs of court.
 shall pay a fine of \$ _____ in the custody of the Sheriff Misdemeanor Confinement Program.
 be imprisoned for a term of _____ hours _____ days pretrial confinement. Work release is recommended.
 The contemnor shall be given credit for _____

Signature of Judicial Official
 Date Name of Judicial Official (Type or Print)

ORDER OF COMMITMENT/APPEAL ENTRIES

It is ORDERED that the Clerk deliver **two** certified copies of this Findings and Order to the sheriff or other qualified officer and that the officer advise the contemnor to be delivered with these copies to the custody of the sheriff of the county named above to serve the sentence imposed or until the contemnor shall have complied with the conditions of release pending appeal.
 The contemnor gives notice of appeal from this Findings and Order in the Superior Court to the appellate division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.
 The contemnor gives notice of appeal from this Findings and Order in the Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17.

NOTE TO COURT: If finding of contempt was made by a judicial official refer to a Superior Court Judge, the appeal is to Superior Court. G.S. 5A-17.
 On appeal from criminal contempt imposing confinement, there must be a full hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 72 hours without a full hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Signature of Judicial Official
 Date Name of Judicial Official (Type or Print)

CERTIFICATION

I certify that this Findings and Order is a true and complete copy of the original which is on file in this case. SEAL

Signature
 Date
 Deputy CSC Assistant CSC Clerk of Superior Court

Original/Date Copy/Share/it

AOC-CR-390, Rev. 12/13
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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

Judge can withdraw or reduce a sentence any time "if warranted by the conduct of the contemnor and the ends of justice."

-5A-12(c)

sog.unc.edu

North Carolina Criminal Law

A UNC School of Government Blog

Consecutive Sentences for Criminal Contempt

Posted on Aug 11, 2016, 3:57 pm by Jamie Markham • 2 comments



One of the [first posts](#) I wrote on this blog was about the punishment for criminal contempt. The post included a discussion about whether sentences for contempt could be run consecutively—something our appellate courts hadn't yet ruled on at the time. In [State v. Burrow](#), decided last week, the court of appeals approved a trial court's orders sentencing a defendant to six consecutive 30-day terms of imprisonment for contempt.

Burrow involved a defendant tried and convicted for attempted felony breaking or entering. He was also convicted of being a habitual felon, raising the punishment class for the attempted breaking or entering from Class I to Class E. The jury found an aggravating factor. The judge found that it outweighed the lone mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level VI: 63–88 months.

In addition to the felony sentence, the court entered six orders finding the defendant guilty of direct criminal contempt. The appellate opinion in *Burrow* doesn't give much detail about what happened, but the trial court orders themselves, available as part of the [appellate record](#), do.

The Court finds beyond a reasonable doubt that during this session of Court and during the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and just before receiving the verdict in the second phase of the defendant's jury trial, when the Court was instructing the defendant's wife, Ms. Amber Childress, not to move about the courtroom

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Criminal contempt - Procedure

Plenary proceeding

- All indirect contempt
- Direct contempt (at court's option)

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 court's option)

AOC-CR-219 STATE OF NORTH CAROLINA

File No. _____ County District Superior Court Division In The General Court Of Justice Before The Clerk

SHOW CAUSE ORDER, FINDINGS AND JUDGMENT - FAILURE TO PAY FINE AND/OR COSTS, TO OBEY JURY SUMMONS, TO APPEAR PURSUANT TO CRIMINAL SUMMONS, OR FOR CONTEMPT

STATE VERSUS IN THE MATTER OF

Name And Address Of Defendant/Contemnor _____

County Of Residence _____ Telephone No. _____

Race _____ Sex _____ Date Of Birth _____ Age _____

Social Security No. _____ Drivers License No. & State _____

Name And Address Of Moving Party, If Not The Court _____

RETURN OF SERVICE

I certify that this Order was received and served as follows:

By personally serving the defendant/contemnor named above with a copy of this Order.

Defendant/contemnor WAS NOT served for the following reason: _____

Date Received _____ Date Served _____ Time Served AM PM Date Returned _____

Name Of Officer (type or print) _____

Signature Of Officer _____

Department Or Agency _____

County Of Department/Agency _____

NOTE TO CLERK: An Order under No. 1 is filed in the original criminal/infraction case. An Order under No. 2 is either a Miscellaneous or Registration file, based on its disposition; see Rule of Recordkeeping 15. An Order under No. 3 establishes a new CR/CDS case if processed as civil contempt, but it is filed in the existing case file if processed as civil contempt. An Order under No. 4 or 5 establishes a new CR/CDS case in the court in which filed.

AOC-CR-219, Rev. 11/15
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To the Defendant/Contemnor Named To The Left: Upon motion of the moving party named herein or on its own motion, the Court finds probable cause to believe that you should be held in contempt of court or fined for your:

I. Failure To Pay Fine And/Or Costs [G.S. 15A-1364]
Failure to pay the fine and/or costs as ordered in this case. The Court will conduct a hearing and decide whether you should be imprisoned for your failure to pay the fine and/or costs. The amount of the fine and/or costs that you were ordered to pay and the balance due as of the date of this Order are as follows:
Amount Of Fine And/Or Costs Ordered Paid \$ _____
Balance Due As Of The Date Of This Order \$ _____

II. Failure To Obey Jury Summons [G.S. 9-13]
Failure to report for jury duty as directed pursuant to a jury summons issued on (date) _____

III. Failure To Obey Other Order Of The Court [G.S. 5A-11; G.S. 5A-21]
Failure to obey the order of the Court indicated below:
Date Of Order _____ File Number _____ County _____ Name Of Official Who Entered Order _____
Describe Action(s) Ordered And Facts Constituting Contempt _____

IV. Failure To Obey Order To Appear Pursuant To Criminal Summons [G.S. 15A-303(e)(3); G.S. 5A-11]
Failure to appear before this Court as directed by a criminal summons issued and duly served on you, ordering you to appear before this Court and answer to the offense(s) indicated below:
Date Summons Issued _____ File Number _____ County _____ Name Of Official Who Issued Summons _____
Date Summons Served _____ Date Of Failure To Appear _____ Offense(s) _____


V. Other Criminal Contempt [G.S. 5A-11; G.S. 15A-1344(e)(1)]
Act of criminal contempt described below: (NOTE TO COURT: The grounds provided in G.S. 5A-11(a) are exclusive.)

You are ORDERED to appear before the Court as indicated below and show cause why you should not be punished for contempt or for failure to comply with the Court's order as described above. If you do not appear, the Court may issue an order for your arrest or may enter other sanctions against you in your absence.

Location Of Court _____ Court Date _____ Court Time AM PM

Date Order Issued _____ Name Of Issuing Official (type or print) _____ Signature Of Issuing Official _____
 Superior Court Judge District Court Judge Magistrate Clerk Of Superior Court Assistant CSC Deputy CSC (over)

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Contempt by Juvenile

- GS 5A- 31
 - Exclusive grounds
- GS 5A-32
 - Direct contempt
 - Summary proceeding
 - Notice and an opportunity to respond
 - **Appoint a lawyer and allow lawyer and juvenile time to confer**
 - Find facts beyond a reasonable doubt
- Or, initiate plenary proceeding
 - **Appoint a lawyer for the juvenile**
 - Issue a show cause order for juvenile to appear before a juvenile court judge
 - Give copy of show cause order to lawyer and to juvenile

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Direct contempt by a juvenile

- Punishment – GS 5A-33(c)
 - Up to 5 days in juvenile detention facility, and/or
 - Up to 30 hours of supervised community service as arranged by a juvenile court counselor, and/or
 - Undergo evaluation as necessary to determine the needs of the juvenile

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Appeal

Magistrate



Superior Court
(*de novo* appeal)

(Juvenile goes to Court of Appeals)

Bail hearing required

- District court judge sets release conditions
- Hearing must be held within 24 hours
 - If judge doesn't act within 24 hours, magistrate or superior court judge can conduct bail hearing

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Scenarios

Alternatives to Contempt?