

ESSENTIALS OF CONTEMPT FOR MAGISTRATES

Michael Crowell
UNC School of Government
October 2013
Update by Thomas H. Thornburg, July 2021

Different kinds of contempt

There are two kinds of contempt: criminal contempt and civil contempt.

Criminal contempt is used to punish for acts that disrupt a court proceeding or show disrespect, and also can be used for violation of court orders. Criminal contempt can be direct or indirect. Direct criminal contempt occurs in the court's presence; indirect does not. Criminal contempt can be punished by imprisonment and/or a fine.

Civil contempt is used to get someone to comply with a court order. There is no distinction between direct and indirect civil contempt; in any event, virtually all civil contempt takes place outside the court's presence. The only means of enforcing civil contempt is to imprison the person until the person complies with the court order.

Magistrate's authority

A magistrate's authority to use contempt is stated in G.S. 7A-292(a)(2). A magistrate may punish only for direct criminal contempt. That is, a magistrate may punish only for criminal contempt that takes place in the magistrate's presence. Any other kind of contempt must be referred to a district court judge.

Meaning of criminal contempt

Criminal contempt is defined in G.S. 5A-11. Only the acts listed in the statute may be punished by criminal contempt.

The contemptuous acts listed in G.S. 5A-11 most likely to be committed directly before a magistrate are:

- "Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings."
- "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."

It is also possible, though less likely, that this form of criminal contempt will be committed directly before a magistrate:

- “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.”

One can also think of unusual situations in which the following forms of criminal contempt could occur directly before a magistrate, but most often they would not be direct contempt because the magistrate would not have actually observed the violation:

- “Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.”
- “Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.”

Meaning of direct contempt

G.S. 5A-13 says that an act is direct criminal contempt only when the act:

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

Summary or plenary proceeding

Contempt may be dealt with in a summary proceeding or a plenary proceeding. A summary proceeding means that the magistrate deals with the contempt right then and there as it occurs. That choice is always available for direct contempt. If for whatever reason the magistrate does not wish to deal with the contempt immediately, the magistrate may issue a show cause order for the defendant to appear before a district judge at a later time for a plenary proceeding. A summary proceeding is an on-the-spot quick determination of contempt; a plenary proceeding is more like a regularly-scheduled trial.

The summary proceeding

At a summary proceeding for direct criminal contempt the magistrate must tell the person that the magistrate is considering holding the person in contempt; describe what the person did that was contemptuous; and give the person a chance to respond why it is not contempt. Even if the conduct which is the basis for contempt is obvious to everyone, and it is clear that the defendant has no good excuse, the magistrate still must explain the basis for the contempt and still must give the defendant an opportunity to respond. The magistrate should also inform the person that contempt can be punished by imprisonment for up to 30 days and a fine of up to \$500.

The summary proceeding must be held “substantially contemporaneously” with the contempt. As a practical matter that means just as soon as the contempt occurs or within a few minutes thereafter. There can be situations in which it is permissible to delay the summary proceeding for a day or so, but a magistrate should not attempt to do that. If the contempt proceeding is not going to be held right away the magistrate should issue a show cause order for the defendant to appear before a district judge at a later time.

G.S. 15A-511(a)(3) says that if a defendant at an initial appearance is so unruly or is unconscious or so intoxicated as to be unable to understand what is going on the magistrate can order the person held for a short time before conducting the initial appearance. If the defendant’s unruliness includes contemptuous behavior, the magistrate may wait on the summary proceeding until the defendant is brought back for the initial appearance. If the defendant acts contemptuously but is too intoxicated for the initial appearance or for an orderly summary proceeding, the defendant probably is not capable of acting willfully (see below) and contempt is not appropriate.

G.S. 5A-16(a) authorizes a magistrate to order a person being charged with direct criminal contempt to be held and restrained “to the extent necessary to assure his presence for summary proceedings” That statute should be used only when necessary to keep the person from fleeing.

A magistrate conducting a summary proceeding should use form AOC-CR-390. The form should describe in detail the behavior that was contemptuous, including direct quotation of words that were spoken.

Show-cause order for a plenary proceeding

Although direct criminal contempt always may be punished summarily, it does not have to be done summarily. The magistrate may choose to issue a show cause order and direct the person to appear before a district court judge in a plenary proceeding. The plenary proceeding should be used when the person is so belligerent or disruptive that it is not possible to conduct a summary proceeding; when the office is too busy to stop for a summary proceeding; or when the magistrate has become too personally involved to decide the contempt.

The form a magistrate should use for a show-cause order for contempt is AOC-CR-219, but the form is not designed for the most common kind of direct criminal contempt. The simplest way to use the form usually will be to check box IV for “Failure To Obey Other Order Of the Court” but strike through that heading and substitute “Interruption of Court Proceeding” or “Disrespect to Court” and then describe the behavior which is contemptuous.

Willfulness and warning

G.S. 5A-12(b) provides that a person may be punished for criminal contempt only if the person’s actions are “willfully contemptuous” or the person was given “a clear warning by the court that the conduct is improper.” Willfulness has been defined by appellate court opinions to mean “more than deliberation or conscious choice; it also imports a bad faith disregard for authority

and the law.” Some acts such as spitting at a magistrate or yelling profanity or kicking a table are willfully contemptuous by their nature and so inherently disruptive and disrespectful that no warning is needed. However, when the defendant is doing something less disrespectful and disruptive, such as talking so much that no one else can speak or refusing to sit down and await one’s turn to be heard, the magistrate must warn the person that the behavior is unacceptable before using contempt.

To avoid later questions about whether the contempt was “willfully contemptuous,” it is better for the magistrate to always give a warning before holding a person in contempt. The willfully contemptuous defendant is not likely to stop just because of the warning.

Right to counsel

If a lawyer is present with a person charged with direct contempt, of course the lawyer may represent the defendant in the summary contempt proceeding. It is not necessary to delay the summary hearing to allow the defendant to get a lawyer, however. And it is not necessary to appoint a lawyer to represent an indigent defendant in a summary contempt proceeding. If the contempt is not addressed summarily by the magistrate and instead proceeds to a plenary hearing before a judge, the indigent defendant is entitled to have counsel appointed.

Recusal

Contemptuous conduct often can be very personal. A defendant may use degrading terms to speak to the magistrate and may be openly hostile in close quarters. In those circumstances the magistrate may feel personally insulted and want to get back at the defendant. If anything about the contemptuous behavior causes a magistrate to feel that way, the magistrate should not conduct a summary proceeding for contempt but instead should issue a show-cause order and allow the contempt charge to be heard by a judge at a later time.

Proof beyond a reasonable doubt

The standard for criminal contempt is the same as for conviction of a crime: A person may not be held in criminal contempt unless the contempt is proved beyond a reasonable doubt. Because direct contempt occurs in the presence of the magistrate, the magistrate’s own view of the defendant’s conduct will establish the proof.

Punishment

G.S. 5A-12 sets out the punishment for criminal contempt. The possible punishments include censure, imprisonment for up to 30 days, a fine of not more than \$500, or any combination of those three options. A magistrate will not use censure, leaving imprisonment and a fine as the choices. Before sentencing a defendant to jail for contempt, or imposing a fine, the magistrate should consider how the penalty will compare with the punishment a defendant likely would

receive for conviction of a crime. If a fine is being imposed, the magistrate needs to consider the person's ability to pay.

Although it will not be appropriate in most instances when a magistrate holds a person in contempt, the sentence for criminal contempt may be suspended with conditions, just as for other criminal offenses.

If a magistrate sentences a defendant to jail for criminal contempt, the magistrate may go back and reduce or terminate the sentence at any time. For example, if a magistrate sentenced a person to jail for two days for contempt, the magistrate could terminate the sentence after one day. Likewise, if a magistrate imposes a fine the magistrate may later reduce or eliminate the fine.

Appeal

Appeal for criminal contempt is from the magistrate to superior court. The appeal is for a hearing *de novo*.

G.S. 5A-17 provides that an appeal from criminal contempt is the same as an appeal in a criminal action. The statute on criminal appeals generally, G.S. 15A-1451, provides that the payment of a fine and costs is stayed upon the defendant's giving notice of appeal, but confinement is stayed only when the defendant is released pursuant to the bail statutes. Thus, if the defendant gives notice of appeal from a sanction of criminal contempt the payment of any fine is stayed automatically but the defendant starts serving the jail time until released on bail. Starting December 1, 2013, G.S. 5A-17 will require that the bail hearing be held by a district judge when a magistrate orders someone to jail for criminal contempt and that the hearing has to be within 24 hours. If a district judge has not held the bail hearing within 24 hours, any other judicial official may do so.

Contempt Scenarios for Magistrates

March 2023

1. There is a sign on the door of the room where you hold small claims hearings. The sign states that cell phones must be turned off before entering the room. Before beginning your calendar, you remind the people in the room to turn off their cell phones. About an hour later, a phone rings in the room. A person answers the phone, speaks briefly, and ends the call. How do you respond?
 - a. Is your response different if you find the person with the cell phone is 16-years old?

2. You are conducting a bond hearing in the magistrate's office. You hear yelling and cursing coming from someone down the hall leading to the magistrate's office. An officer appears before you and tells you that the person making the noise is someone the officer arrested and brought to the office for a bond hearing. You finish the bond hearing you were conducting and tell the officer to bring the person to you. When she appears in front of you, she is calm and respectful. What, if anything, do you do about her earlier conduct?
 - a. Rather than being respectful, she curses at you. You tell her that you are considering holding her in contempt, and she continues to curse. She is extremely agitated and loud, and you smell alcohol on her. What can you do?

3. You conducted small claims court this morning. In one case, the defendant did not appear. You allowed plaintiff to move forward with the case and you entered judgment against defendant. You are in your office after finishing your small claims cases and defendant's attorney calls you on the telephone. He tells you that it was his fault defendant did not show for court because the attorney told the defendant he would have the matter continued. He asked you to set aside your judgment and reschedule the case. You tell him this is an inappropriate ex parte communication and suggest that he file any motion he deems appropriate. The lawyer becomes angry. He raises his voice, calls you "stupid" and states that you don't know what you're talking about. How do you respond?

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Before the Clerk District Superior Court Division

IN THE MATTER OF

DIRECT CRIMINAL CONTEMPT/
SUMMARY PROCEEDINGS/
FINDINGS AND ORDER

Name And Address Of Contemnor

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

Form with fields: Race, 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 first appearance, a pre-trial motion hearing, a probable cause hearing, an estates proceeding, a special proceeding, a trial, other: _____

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 explain his/her behavior, however the contemnor is not entitled to counsel, if court promptly punishes 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 censured for contempt, shall pay a fine of \$ _____ (max. \$500.00), shall pay the costs of court, be imprisoned for a term of _____ hours _____ days in the custody of the Sheriff Other: _____, The contemnor shall be given credit for _____ days' pretrial confinement. Work release is recommended. This sentence shall run at the expiration of the sentence imposed in file number _____.

Form with fields: Date, Name Of Judicial Official (type or print), Signature Of Judicial Official

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 cause 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 to the Superior Court. 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.

NOTE TO COURT: If finding of contempt was made by a judicial official inferior 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 bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.

Form with fields: Date, Name Of Judicial Official (type or print), Signature Of Judicial Official

CERTIFICATION

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

Form with fields: Date, Signature, SEAL, Date Certified Copies Delivered To Sheriff, Deputy CSC, Assistant CSC, Clerk Of Superior Court

File No.

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	<input type="checkbox"/> AM <input type="checkbox"/> 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. I is filed in the original criminal/infraction case. An Order under No. II is either a Miscellaneous or Registration file, based on its disposition; see Rule of Recordkeeping 16. An Order under No. III establishes a new CR/CRS case if prosecuted as criminal contempt, but it is filed in the existing case file if disposed as civil contempt. An Order under No. IV or V establishes a new CR/CRS case in the court in which filed.

STATE OF NORTH CAROLINA

County District Superior Court Division Before The Clerk
In The General Court Of Justice

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(e1)]

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
Date Order Issued	Name Of Issuing Official (type or print)	Signature Of Issuing Official	<input type="checkbox"/> AM <input type="checkbox"/> PM
<input type="checkbox"/> Superior Court Judge	<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Magistrate	<input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Deputy CSC

(Over)

Attorney For State/Moving Party

Attorney For Defendant/Contemnor

Def. Not Indigent Waived Appointed Retained

APPEAL ENTRIES - CRIMINAL CONTEMPT

NOTE TO COURT: *If finding of contempt was made by a judicial official inferior 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 bail hearing "within a reasonable time period" after confinement is imposed. The contemnor may not be confined more than 24 hours without a bail hearing. See G.S. 5A-17(b) for officials who may conduct the hearing.*

The defendant/contemnor gives notice of appeal from the judgment of the District Court to the Superior Court.

The defendant/contemnor gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appellate entries and any conditions of post-conviction release are set forth on form AOC-CR-350.

Date _____ Name Of Presiding Judge (type or print) _____
Signature Of Presiding Judge _____

CERTIFICATION

I certify that this Judgment and attachment(s) marked below is a true and complete copy of the original which is on file in this case.
 Appellate Entries (AOC-CR-350)
 Other: _____

Date _____ Date Certified Copies Delivered To Sheriff _____

Signature Of Clerk _____

SEAL

Deputy CSC Assistant CSC Clerk Of Superior Court

FINDINGS

The defendant/contemnor having appeared not appeared before the Court, the Court makes the following findings:
Contempt. G.S. Chapter 5A. (NOTE: The Court may not find both civil and criminal contempt for the same conduct. G.S. 5A-12(d), 5A-21(c), and 5A-23(g).)
 that the defendant/contemnor is not in criminal or civil contempt.
 that the defendant/contemnor is in criminal civil contempt of court, based on the Court's findings of fact beyond a reasonable doubt and conclusions of law herein: (attach additional pages if necessary)

Failure To Obey Jury Summons. G.S. 9-13.

that the juror was summoned to appear, was served with a jury summons, failed to appear, and has not rendered an excuse deemed sufficient for that failure to appear.
 Other: _____

Failure To Pay Fine And/Or Costs. G.S. 15A-1364.

that the defendant has defaulted in payment of the fine and/or costs imposed in this case, for which defendant had the ability to comply or failed to make a good faith effort to obtain the necessary funds for payment.
 Other: _____

JUDGMENT

Dismissal. All proceedings pursuant to this Show Cause Order are dismissed.

Criminal Contempt. G.S. 5A-12. It is ORDERED that the defendant: (check all that apply)

NOTE TO COURT: *If suspending a sentence for contempt, impose judgment on form AOC-CR-604.*

1. is hereby censured for contempt. 2. shall pay a fine of \$ _____ (max \$500.00). 3. shall pay the costs of court.
 4. be imprisoned for a term of _____ days in the custody of the Sheriff Other: _____
The defendant shall be given credit for _____ days' pretrial confinement. Work release is recommended.

This sentence shall run at the expiration of the sentence imposed in file number _____.
 Civil Contempt. G.S. 5A-21. It is ORDERED that the contemnor be imprisoned in the custody of the Sheriff until the contemnor purges himself/herself of the contempt by: (describe conduct to purge) _____

The Sheriff shall release the contemnor from custody unconditionally upon finding pursuant to G.S. 5A-22 that the contemnor has satisfied the purge condition(s) above or upon notice from a judicial official of such satisfaction.

Rehearing Date. If the contemnor is not sooner released, the Sheriff is hereby ORDERED to produce him/her before this Court at the time, date, and location below for a *de novo* hearing on the issue of contempt.

NOTE TO COURT: *A person committed for civil contempt for nonpayment of a monetary obligation other than child support may not be imprisoned more than 90 days at one time. Recommitment is allowed only after a de novo hearing for contempt. G.S. 5A-21 (b2).*

Location Of Court _____ Court Date _____ Court Time _____
 AM PM

Failure To Obey Jury Summons. G.S. 9-13. The juror is ordered to pay a fine of \$ _____ (not to exceed \$50.00). If the fine is not paid by (date) _____, the Clerk shall docket a civil judgment for that amount and issue an execution against the juror's estate.
 Failure To Pay Fine And/Or Costs. G.S. 15A-1364. The Court hereby orders that:

NOTE TO COURT: *To activate a suspended sentence imposed at the time of conviction, use form AOC-CR-343, AOC-CR-607, or AOC-CR-608.*

the defendant be imprisoned for _____ days (not to exceed 30) in the custody of the Sheriff. N.C. DAC.
 The Court finds that the defendant is is not suitable for placement in a county satellite jail/work release unit.

the defendant's fine and cost obligations are modified as follows:
 upon receipt of notice from a judicial official that the defendant has paid or satisfied the remaining obligation for the fine and costs, the custodian designated above shall release the defendant from custody.

The Clerk shall docket the fine of \$ _____ and costs of \$ _____ against the defendant as a civil judgment, G.S. 15A-1365. but pursuant to the defendant's election to serve a sentence of imprisonment for the default, no execution may issue thereon.

ORDER OF COMMITMENT

It is ordered that the Clerk deliver two certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant/contemnor to be delivered with these copies to the custody of the agency named above to serve the sentence imposed or until the defendant/contemnor shall have complied with the conditions for his/her release.

SIGNATURE OF JUDICIAL OFFICIAL

Date _____ Name Of Presiding Judicial Official (type or print) _____ Signature Of Presiding Judicial Official _____

§ 5A-11. Criminal contempt.

- (a) Except as provided in subsection (b), each of the following is criminal contempt:
- (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. For purposes of this subdivision, "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.

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

(c) This section is subject to the provisions of G.S. 7A-276.1, Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned. (1977, c. 711, s. 3; 1994, Ex. Sess., c. 19, s. 1; 2011-307, s. 6.)

§ 5A-14. Summary proceedings for contempt.

(a) The presiding judicial official may summarily impose measures in response to direct criminal contempt 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.

(b) Before imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition of measures in response to contempt. The facts must be established beyond a reasonable doubt. (1977, c. 711, s. 3.)

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 18 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; 2017-57, s. 16D.4(m); 2018-142, s. 23(b).)

§ 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.)