

**Chapter 5A.**

**Contempt.**

Article 1.

Criminal Contempt.

**§ 5A-1. Reserved for future codification purposes.**

**§ 5A-2. Reserved for future codification purposes.**

**§ 5A-3. Reserved for future codification purposes.**

**§ 5A-4. Reserved for future codification purposes.**

**§ 5A-5. Reserved for future codification purposes.**

**§ 5A-6. Reserved for future codification purposes.**

**§ 5A-7. Reserved for future codification purposes.**

**§ 5A-8. Reserved for future codification purposes.**

**§ 5A-9. Reserved for future codification purposes.**

**§ 5A-10. Reserved for future codification purposes.**

**§ 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-12. Punishment; circumstances for fine or imprisonment; reduction of punishment; other measures.**

(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three, except that:

- (1) A person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars (\$500.00), or any combination of the three;
- (2) A person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of Chapter 15A of the General Statutes is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three; and
- (3) A person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three. However, a sentence of imprisonment up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon conditions reasonably related to the contemnor's payment of child support.

(b) Except for contempt under G.S. 5A-11(5) or 5A-11(9), fine or imprisonment may not be imposed for criminal contempt, whether direct or indirect, unless:

- (1) The act or omission was willfully contemptuous; or
- (2) The act or omission was preceded by a clear warning by the court that the conduct is improper.

(c) The judicial official who finds a person in contempt may at any time withdraw a censure, terminate or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt if warranted by the conduct of the contemnor and the ends of justice.

(d) A person held in criminal contempt under this Article shall not, for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt.

(e) A person held in criminal contempt under G.S. 5A-11(9) may nevertheless, for the same conduct, be found guilty of a violation of G.S. 14-225.1, but he must be given credit for any imprisonment resulting from the contempt. (1977, c. 711, s. 3; 1985 (Reg. Sess., 1986), c. 843, s. 1; 1987 (Reg. Sess., 1988), c. 1040, ss. 2, 4; 1989 (Reg. Sess., 1990), c. 1039, s. 4; 1991, c. 686, s. 3; 1999-361, s. 3; 2009-335, s. 1.)

### **§ 5A-13. Direct and indirect criminal contempt; proceedings required.**

(a) Criminal contempt is direct criminal contempt when the act:

- (1) Is committed within the sight or 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.

The presiding judicial official may punish summarily for direct criminal contempt according to the requirements of G.S. 5A-14 or may defer adjudication and sentencing as provided in G.S. 5A-15. If proceedings for direct criminal contempt are deferred, the judicial official must, immediately following the conduct, inform the person of his intention to institute contempt proceedings.

(b) Any criminal contempt other than direct criminal contempt is indirect criminal contempt and is punishable only after proceedings in accordance with the procedure required by G.S. 5A-15. (1977, c. 711, s. 3.)

### **§ 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.)

### **§ 5A-15. Plenary proceedings for contempt.**

(a) When a judicial official chooses not to proceed summarily against a person charged with direct criminal contempt or when he may not proceed summarily, he may proceed by an order directing the person to appear before a judge at a reasonable time specified in the order and show cause why he should not be held in contempt of court. A copy of the order must be furnished to the person charged. If the criminal contempt is based upon acts before a judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different judge.

(b) Proceedings under this section are before a district court judge unless a court superior to the district court issued the order, in which case the proceedings are before that court. Venue lies throughout the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the order was issued.

(c) The person ordered to show cause may move to dismiss the order.

(d) The judge is the trier of facts at the show cause hearing.

(e) The person charged with contempt may not be compelled to be a witness against himself in the hearing.

(f) At the conclusion of the hearing, the judge must enter a finding of guilty or not guilty. If the person is found to be in contempt, the judge must make findings of fact and enter judgment. The facts must be established beyond a reasonable doubt.

(g) The judge presiding over the hearing may appoint a prosecutor or, in the event of an apparent conflict of interest, some other member of the bar to represent the court in hearings for criminal contempt. (1977, c. 711, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 44.)

#### **§ 5A-16. Custody of person charged with criminal contempt.**

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

(b) If a judicial official who initiates plenary proceedings for contempt under G.S. 5A-15 finds, based on sworn statement or affidavit, probable cause to believe the person ordered to appear will not appear in response to the order, he may issue an order for arrest of the person, pursuant to G.S. 15A-305. A person arrested under this subsection is entitled to release under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1977, c. 711, s. 3.)

#### **§ 5A-17. Appeals; bail proceedings.**

(a) A person found in criminal contempt may appeal in the manner provided for appeals in criminal actions, except appeal from a finding of contempt by a judicial official inferior to a superior court judge is by hearing de novo before a superior court judge.

(b) Upon appeal in a case where the judicial official imposes confinement, a bail hearing shall be held within a reasonable time period after imposition of the confinement. The judicial official holding the bail hearing shall be:

(1) A district court judge if the confinement is imposed by a clerk or magistrate.

(2) A superior court judge if the confinement is imposed by a district court judge.

(3) A superior court judge other than the superior court judge that imposed the confinement.

(c) A person found in contempt and who has given notice of appeal may be retained in custody not more than 24 hours from the time of imposition of confinement without a bail determination being made by a judicial official as designated under subdivisions (1) through (3) of subsection (b) of this section. If a designated judicial official has not acted within 24 hours of the imposition of confinement, any judicial official shall act under the provisions of subsection (b) of this section and hold the bail hearing. (1977, c. 711, s. 3; 2013-303, s. 1.)

#### **§ 5A-18. Reserved for future codification purposes.**

#### **§ 5A-19. Reserved for future codification purposes.**

**§ 5A-20. Reserved for future codification purposes.**