

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 170
Judiciary I Committee Substitute Adopted 4/15/99
House Committee Substitute Favorable 7/8/99

Short Title: Restructure Civil Contempt.

(Public)

Sponsors:

Referred to:

February 25, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21 reads as rewritten:

"§ 5A-21. Civil contempt; imprisonment to compel compliance.

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

- (1) The order remains in force;
- (2) The purpose of the order may still be served by compliance with the order; ~~and order;~~
- (2a) The noncompliance by the person to whom the order is directed is willful; and
- (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable ~~him~~ the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the civil contempt ~~continues,~~ continues, subject to the limitations provided in subsections (b1)

1 and (b2) of this section. Notwithstanding subsection (b2) of this section, if a person is
2 found in civil contempt for failure to pay child support or failure to comply with a court
3 order to perform an act that does not require the payment of a monetary judgment, the
4 person may be imprisoned as long as the civil contempt continues without further
5 hearing.

6 (b1) A person who is found in civil contempt, unless the contempt is failure by a
7 person but was not arrested for the crime arrested, for failure to comply with a
8 nontestimonial identification order issued pursuant to Article 14, Nontestimonial
9 Identification Order, of Chapter 15A of the General Statutes. In that case, he Statutes may
10 not be imprisoned more than 90 days unless he the person is arrested on probable cause.

11 (b2) The period of imprisonment for a person found in civil contempt shall not
12 exceed 90 days for the same act of disobedience or refusal to comply with an order of the
13 court. A person who has not purged himself or herself of the contempt within the period
14 of imprisonment imposed by the court under this subsection may be recommitted for one
15 or more successive periods of imprisonment, each not to exceed 90 days. However, the
16 total period of imprisonment for the same act of disobedience or refusal to comply with
17 the order of the court shall not exceed 12 months, including both the initial period of
18 imprisonment imposed under this section and any additional period of imprisonment
19 imposed under this subsection. Before the court may recommit a person to any additional
20 period of imprisonment under this subsection, the court shall conduct a hearing de novo.
21 The court must enter a finding for or against the alleged contemnor on each of the
22 elements of G.S. 5A-21(a), and must find that all of elements of G.S. 5A-21(a) continue
23 to exist before the person can be recommitted. For purposes of this subsection, a person's
24 failure or refusal to purge himself or herself of contempt shall not be deemed a separate
25 or additional act of disobedience, failure, or refusal to comply with an order of the court.

26 (c) A person who is found in civil contempt under this Article ~~may, nevertheless,~~
27 ~~shall not,~~ for the same conduct, be found in criminal contempt under Article 1 of this
28 ~~Chapter, Chapter.~~ but the total period of imprisonment arising from the conduct may not exceed
29 the greater of:

30 (1) ~~The period during which the contemnor may be imprisoned for civil~~
31 ~~contempt; or~~

32 (2) ~~The period of imprisonment provided in G.S. 5A-12(a)."~~

33 Section 2. G.S. 5A-23(e) reads as rewritten:

34 "(e) At the conclusion of the hearing, the judicial official must enter a finding for or
35 against the alleged ~~contemnor.~~ contemnor on each of the elements set out in G.S. 5A-
36 21(a). If civil contempt is found, the judicial official must enter an order finding the facts
37 constituting contempt and specifying the action which the contemnor must take to purge
38 himself or herself of the contempt."

39 Section 3. G.S. 5A-12(d) reads as rewritten:

40 "(d) A person held in criminal contempt under this Article ~~may nevertheless, shall~~
41 ~~not,~~ for the same conduct, be found in civil contempt under Article 2 of this Chapter,
42 Civil Contempt. ~~If a person is found in both civil contempt and criminal contempt for the same~~
43 ~~conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(e)."~~

1 Section 4. G.S. 5A-23(a) reads as rewritten:

2 "(a) Proceedings for civil contempt are ~~either~~ by motion pursuant to G.S. 5A-
3 23(a1), by the order of a judicial official directing the alleged contemnor to appear at a
4 specified reasonable time and show cause why he should not be held in civil ~~contempt~~
5 contempt, or by the notice of a judicial official that the alleged contemnor will be held in
6 contempt unless he appears at a specified reasonable time and shows cause why he
7 should not be held in contempt. The order or notice must be given at least five days in
8 advance of the hearing unless good cause is shown. The order or notice may be issued on
9 the motion and sworn statement or affidavit of one with an interest in enforcing the order,
10 including a judge, and a finding by the judicial official of probable cause to believe there
11 is civil contempt."

12 Section 5. G.S. 5A-23 is amended by adding a new subsection to read:

13 "(a1) Proceedings for civil contempt may be initiated by motion of an aggrieved
14 party giving notice to the alleged contemnor to appear before the court for a hearing on
15 whether the alleged contemnor should be held in civil contempt. A copy of the motion
16 and notice must be served on the alleged contemnor at least five days in advance of the
17 hearing unless good cause is shown. The motion must include a sworn statement or
18 affidavit by the aggrieved party setting forth the reasons why the alleged contemnor
19 should be held in civil contempt. The burden of proof in a hearing pursuant to this
20 subsection shall be on the aggrieved party."

21 Section 6. This act becomes effective December 1, 1999, and applies to all
22 proceedings for civil contempt held on or after that date.