

## ESSENTIALS OF CONTEMPT

The purpose of **criminal** contempt is **punishment** for violating a court order or displaying disrespect for the court. **Civil** contempt is to coerce **compliance** with a court order.

### CRIMINAL CONTEMPT

Criminal contempt may be imposed **only** for the grounds listed in GS 5A-11(a).

Criminal contempt may be **direct** or **indirect**. Direct occurs in your presence; indirect does not.

A **summary proceeding** may be used for **direct** contempt only.

Even in a summary proceeding the defendant must be told the basis for contempt and given an opportunity to respond.

For a plenary proceeding for indirect contempt, a show cause order must be issued, informing the defendant of the basis for the charge.

An **order for arrest** may be used to bring a defendant to a plenary proceeding, but only if a likelihood of not appearing is shown by affidavit or sworn statement.

In a plenary proceeding an indigent defendant is entitled to have counsel appointed and has a right against self-incrimination. There is no right to a jury trial.

Criminal contempt must be **willful**. Generally, the defendant must be warned that the behavior is contemptuous.

Criminal contempt must be proved **beyond a reasonable doubt**.

Punishment is up to 30 days in jail and/or a fine of up to \$500. The sentence must be for a set punishment, but a suspended sentence may be used and conditions imposed.

### CIVIL CONTEMPT

There is no summary proceeding for civil contempt.

The only basis for civil contempt is failure to comply with a court order.

An indigent defendant is entitled to have counsel appointed if imprisonment is likely.

The contempt must be **willful**. There must be a finding that the defendant has the **present ability** to comply with the court order and refuses to do so.

The burden of proof is on the party bringing the contempt charge, but the burden shifts when the court issues a show cause order after a finding of probable cause.

The right against self-incrimination does not apply.

Imprisonment is the only sanction for civil contempt. Imprisonment lasts only until the defendant complies with the court's order. The contempt order must include a **purge** provision, a statement of what the defendant must do to be released.

A person may not be held in both criminal and civil contempt for the same act.