

Comparison of Criminal and Civil Contempt In Child Support Enforcement Proceedings

	Criminal Contempt	Civil Contempt
Statutory Reference	GS 5A-11 through 5A-17; GS 50-13.4(f)(9).	GS 5A-21 through 5A-25; GS 50-13.4(f)(9).
Purpose	To punish noncompliance with court order.	To coerce compliance with court order.
Basis for Contempt	Willful disobedience of court order requiring payment of child support. The court must find that obligor failed to pay court-ordered child support and that he had the ability to pay all or part of the support owed. Obligor's failure to pay support may have occurred at any time since entry of the order regardless of whether he still owes past-due support at the time of the contempt hearing.	Willful failure to comply with court order requiring payment of child support. The court must find that obligor has failed to pay court-ordered child support, still owes past-due child support as of the time of the contempt hearing, and has the present ability to pay all or part of the support owed or take reasonable steps that would enable him to do so.
Motion and Order or Notice to Show Cause	Judicial official, without application or motion, may issue an order requiring obligor to appear and show cause why he should not be held in contempt.	Upon motion and affidavit of any person interested in enforcing the order and finding of probable cause to believe that obligor is in contempt, judicial official may issue an order requiring obligor to appear and show cause why he should not be held in contempt or notice that obligor will be held in contempt if he fails to appear and show cause why he should not be held in contempt. Alternatively, aggrieved party may serve motion, affidavit, and notice of hearing on obligor alleged to be in civil contempt.
Motion to Dismiss	Alleged contemnor may file motion to dismiss.	Alleged contemnor may file motion to dismiss.
Arrest for Failure to Appear	Judicial official may issue order for arrest of alleged contemnor based on sworn statement or affidavit and finding of probable cause that alleged contemnor will not appear at contempt hearing. Alleged contemnor is entitled to pre-trial release and may be required to post an appearance (not compliance) bond.	
Right to Counsel	Court may not incarcerate indigent person convicted of criminal contempt unless contemnor was represented by court-appointed counsel or waived right to counsel. Absent waiver, court must appoint counsel for an indigent defendant if incarceration is possible.	Court may not incarcerate indigent person found in criminal contempt unless contemnor was represented by court-appointed counsel or waived right to counsel. Absent waiver, court must appoint counsel for an indigent defendant if incarceration is possible.
Alleged Contemnor's Testimony	Alleged contemnor may not be compelled to be a witness against himself.	Absent a grant of immunity from criminal prosecution, alleged contemnor may assert right against self incrimination and refuse to testify, but court may draw adverse inference of fact from failure to testify.

	Criminal Contempt	Civil Contempt
Burden and Standard of Proof	Court is represented by prosecutor except when prosecutor has conflict of interest. Contempt must be proved beyond a reasonable doubt.	In contempt proceedings initiated by motion, affidavit, and notice of aggrieved party, burden of proof is on the aggrieved party. In contempt proceedings initiated by order or notice to show cause issued by judicial official, alleged contemnor has burden of presenting evidence to show that he is not in contempt.
Trier of Fact	District court judge; no right to jury trial.	District court judge; no right to jury trial.
Findings of Fact	Court must make findings of fact, supported by evidence, sufficient to support conviction.	Court must make findings of fact, supported by evidence, on issues of willful failure to comply with court order and obligor's present ability to comply with order.
Relationship Between Civil and Criminal Contempt	Contemnor found guilty of criminal contempt may not be held in civil contempt for the same action. Order or judgment must clearly indicate if obligor is found in criminal or civil contempt.	Contemnor found in civil contempt may not be found guilty of criminal contempt for the same action. Order or judgment must clearly indicate if obligor is found in criminal or civil contempt.
Fine	May not exceed \$500; may be imposed in lieu of or in addition to incarceration.	
Incarceration	An obligor convicted of criminal contempt may be sentenced to fixed term of incarceration, not to exceed 30 days, in lieu of or in addition to fine. Court may suspend sentence and place contemnor on probation. If a sentence for criminal contempt is suspended and the contemnor is placed on probation, the conditions of probation are not purge conditions. The contemnor's probation may be revoked and the sentence activated if the contemnor violates the conditions of probation. The judicial official who finds an obligor in criminal contempt may at any time terminate or reduce the contemnor's sentence if warranted by the contemnor's conduct and the ends of justice.	An obligor who is found in civil contempt may be incarcerated for as long as his contempt continues or until he complies with the conditions for purging his contempt. An obligor may avoid incarceration if he immediately complies with the purge conditions. An obligor may be incarcerated for civil contempt only if he is presently able, but unwilling, to comply immediately with the purge conditions. If the obligor is incarcerated, the sheriff or jailer may release him without further order from the court when he complies with the order or purge conditions. An incarcerated obligor may file a motion seeking his release. The motion must be directed to the judge who found him in contempt.
Purging Contempt	A person convicted of criminal contempt may not purge the contempt. The judicial official who finds an obligor in criminal contempt, however, may at any time terminate or reduce the contemnor's sentence if warranted by the contemnor's conduct and the ends of justice.	Order must specify how contemnor may purge contempt. Purge conditions must be related to obligor's compliance with the order and may not require the obligor to do something that is not within his present ability to do. Purge conditions that require the obligor to do something in the future are improper because they are not within the obligor's present ability and are not conditions related to the obligor's present ability to avoid or be released from incarceration.
Appeal	Contemnor may appeal within 10 days of judgment to superior court for trial de novo.	Aggrieved party may appeal within 30 days of judgment to NC Court of Appeals.