

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 170
Judiciary I Committee Substitute Adopted 4/15/99

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 AND TO RAISE THE STANDARD OF
PROOF IN PROCEEDINGS 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.

1 (b) A person who is found in civil contempt may be imprisoned as long as ~~his~~ the
2 civil contempt continues, continues, subject to the limitations provided in subsections (b1)
3 and (b2) of this section.

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

9 (b2) The period of imprisonment for a person found in civil contempt, except as set
10 forth in (b1), shall not exceed 30 days for the same act of disobedience or refusal to
11 comply with an order of the court. A person who has not purged himself or herself of the
12 contempt within the period of imprisonment imposed by the court under this subsection
13 may be recommitted for one or more successive periods of imprisonment, each not to
14 exceed 30 days. However, the total period of imprisonment for the same act of
15 disobedience or refusal to comply with the order of the court shall not exceed six months,
16 including both the initial period of imprisonment imposed under this section and any
17 additional period of imprisonment imposed under this subsection. Before the court may
18 recommit a person to any additional period of imprisonment under this subsection, the
19 court shall conduct a hearing de novo. The court must enter a finding for or against the
20 alleged contemnor on each of the elements of G.S. 5A-21(a), and must find by clear,
21 cogent, and convincing evidence that all of elements of G.S. 5A-21(a) continue to exist
22 before the person can be recommitted. For purposes of this subsection, a person's failure
23 or refusal to purge himself or herself of contempt shall not be deemed a separate or
24 additional act of disobedience, failure, or refusal to comply with an order of the court.

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

28 (1) The period during which the contemnor may be imprisoned for civil
29 contempt; or

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

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

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

38 Section 3. This act is effective when it becomes law and applies to all
39 proceedings for civil contempt held on or after that date. Section 1 of this act applies to
40 all persons imprisoned for civil contempt on or after that date and to all persons currently
41 imprisoned for civil contempt.