

## **CHAPTER 27-10 CONTEMPTS**

### **27-10-01. Acts punishable as criminal contempts by courts of record.**

Repealed by S.L. 1975, ch. 106, § 673.

#### **27-10-01.1. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Contempt of court" means:
  - a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;
  - b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case when by law execution cannot be awarded for the collection of the sum;
  - c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer, including a referee or magistrate;
  - d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;
  - e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court;
  - f. Intentional behavior in derogation of any provision of a summons issued pursuant to rule 8.4 of the North Dakota Rules of Court; or
  - g. Any other act or omission specified in the court rules or by law as a ground for contempt of court.
2. "Court" means a court of record of this state.
3. "Punitive sanction" includes a sanction of imprisonment if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court.
4. "Remedial sanction" includes a sanction that is conditioned upon performance or nonperformance of an act required by court order. A sanction requiring payment of a sum of money is remedial if the sanction is imposed to compensate a party or complainant, other than the court, for loss or injury suffered as a result of the contempt.

#### **27-10-01.2. Power of court to punish for contempt of court.**

1. A court of record of this state may impose a remedial or punitive sanction for contempt of court under this chapter.
2. Upon the trial of an action or issue by a referee appointed by the court, the commission of any offense that constitutes contempt of court must be deemed contempt of the court appointing the referee, and the offense may be punished by the court in the manner and upon the proceedings in this chapter provided, except that the offense may be presented to the court by a report of the referee instead of by affidavit.

#### **27-10-01.3. Nonsummary procedure for remedial and punitive sanctions - Joint hearing and trial - Summary procedure - Appeal.**

1. a. The court on its own motion or motion of a person aggrieved by contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter. In a proceeding to impose a remedial sanction for failure to pay child or spousal support, an order to pay support is prima facie evidence the obligor has the ability to pay, and the burden of persuasion is upon the obligor to prove inability to pay the support ordered.

- b. The state's attorney of a county, the attorney general, or a special prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The state's attorney, attorney general, or special prosecutor may initiate issuance of the complaint or may issue the complaint on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. A judge is disqualified from presiding at the trial of an alleged contemnor if a reasonable likelihood or appearance of bias or prejudice will otherwise exist, if the contempt alleged involves disrespect or criticism of the judge, or if the judge has personal knowledge of disputed evidentiary facts. The person charged is entitled to a trial by jury.
- c. The court may hold a hearing on a motion for a remedial sanction jointly with a trial on a complaint seeking a punitive sanction.
- 2. The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits contempt of court in the actual presence of the court. The judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.
- 3. An appeal may be taken to the supreme court from any order or judgment finding a person guilty of contempt. An order or judgment finding a person guilty of contempt is a final order or judgment for purposes of appeal.

**27-10-01.4. Remedial sanctions - Punitive sanctions for nonsummary and summary procedure - Past conduct.**

- 1. A court may impose one or more of the following remedial sanctions:
  - a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;
  - b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, e, or f of subsection 1 of section 27-10-01.1. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;
  - c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;
  - d. An order designed to ensure compliance with a previous order of the court; or
  - e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.
- 2.
  - a. A court, after a finding of contempt of court in a nonsummary procedure under subdivision b of subsection 1 of section 27-10-01.3, may impose for each separate contempt of court a fine not exceeding one thousand dollars, imprisonment in the county jail for not more than one year, or both.
  - b. A court, after a finding of contempt of court in the summary procedure under subsection 2 of section 27-10-01.3, may impose for each separate contempt of court a fine of not more than five hundred dollars, imprisonment in the county jail for not more than thirty days, or both.
- 3. A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

**27-10-02. Penalty for criminal contempt.**

Repealed by S.L. 1975, ch. 106, § 673.

**27-10-03. Acts punishable as civil contempts.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-04. Penalty for civil contempt - When party injured indemnified instead of fine being imposed.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-05. Corporations subject to fines.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-06. Contempt committed in presence of judge punishable summarily - Order imposing punishment.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-07. Order to show cause or warrant of attachment for contempt not committed in presence of judge.**

In addition to the procedure set out in section 27-10-01.3, when an act punishable as contempt is not committed in the immediate view and presence of the court, the court, upon being satisfied of the commission of the offense, may:

1. Order the accused to show cause at a specified time and place why the accused should not be punished for the alleged offense; or
2. Issue a warrant of attachment directed to the sheriff of any county where the accused may be found commanding the sheriff to arrest and bring the accused before the court at a specified time and place to answer for the alleged offense.

**27-10-08. Nature of proceedings upon order to show cause or warrant of attachment for contempt.**

An order to show cause issued pursuant to section 27-10-07 may be made in the action or proceeding in or respecting which the offense was committed, either before or after the final judgment or order therein, and is equivalent to a notice of motion. The subsequent proceedings must be taken in the action or proceeding as upon a motion made therein.

**27-10-09. Papers to be served on person arrested for contempt.**

When a person accused of contempt is arrested under a warrant of attachment, a copy of the warrant and of the affidavit or report of a referee upon which it is issued must be served upon the accused.

**27-10-10. Amount of undertaking for appearance of accused may be fixed and endorsed on warrant by judge.**

When a warrant of attachment of a person accused of contempt is issued, the court, by an endorsement thereon, may fix a sum in which the accused may give an undertaking for the accused's appearance to answer.

**27-10-11. Duties of sheriff after arrest if undertaking not given by accused.**

When a person accused of contempt is arrested upon a warrant of attachment, the sheriff, if the amount of the undertaking for the appearance of the accused is not endorsed on the warrant, or if such an endorsement is made and an undertaking is not given as prescribed in section 27-10-10, shall keep the accused in custody until the further direction of the court. When from sickness or other cause the accused is physically unable to attend before the court, that fact is a sufficient excuse to the sheriff for not producing the accused as required by the warrant. In that case, the sheriff shall produce the accused as directed by the court after the accused becomes able to attend. The sheriff in any case need not confine the accused in prison or otherwise restrain the accused except so far as is necessary in order to secure the accused's personal attendance.

**27-10-12. Accused discharged from arrest on delivering undertaking - Nature of undertaking.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-13. Procedure on return of warrant of attachment or order to show cause for contempt.**

When a person accused of contempt is produced by virtue of a warrant of attachment, or appears upon the return of such a warrant or of an order to show cause, the court shall proceed pursuant to subsection 1 of section 27-10-01.3.

**27-10-14. Order directing punishment of and warrant of commitment of person found guilty of contempt.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-15. Contents of order for punishment and warrant of commitment.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-16. Person imprisoned for contempt may be ordered discharged.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-17. Punishment for contempt no bar to criminal prosecution.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-18. Procedure when person arrested gives undertaking for appearance but fails to appear.**

When a person arrested by authority of a warrant of attachment for contempt has given an undertaking as prescribed in this chapter and fails to appear on the return day of the warrant, the court may issue another warrant or may make an order directing the undertaking to be prosecuted, or both.

**27-10-19. Undertaking may be ordered prosecuted by and in behalf of party aggrieved - Extent of recovery.**

An order directing an undertaking given for the appearance of a person accused of contempt to be prosecuted, in the discretion of the court, may direct the prosecution thereof by and in the name of any party aggrieved by the misconduct of the accused. In such a case, the plaintiff may recover damages to the extent of the loss or injury sustained by reason of the misconduct, together with the costs and expenses of prosecuting the proceedings in which the warrant was issued, but the recovery may not exceed the sum specified in the undertaking.

**27-10-20. When undertaking ordered prosecuted in name of state - Disposition of moneys collected.**

In an order for the prosecution of an undertaking given for the appearance of a person accused of contempt, the court, whenever it thinks proper to do so, may, or whenever no party is aggrieved by the misconduct of the person, shall, direct a prosecution to be made in the name of this state by the attorney general or by the state's attorney of the county in which the undertaking was given. In an action brought pursuant to such direction, the state is entitled to recover the entire sum specified in the undertaking. Out of the money collected, the court which directed the prosecution must order the person at whose instance a warrant was issued to be paid such a sum as it thinks proper to satisfy the costs and expenses incurred by the person and to compensate the person for the loss or injury sustained by reason of the misconduct. The residue of the money must be paid into the treasury of this state to the credit of the school fund.

**27-10-21. Sheriff liable for insufficient surety - Enforcement of liability.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-22. Procedure to punish contempt before referee.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-23. Contempt of witness before notary public, officer, board, or tribunal.**

If a witness fails to attend for examination when duly required to do so, or refuses to be sworn, or to answer as a witness, before a notary public or any other officer, board, or tribunal authorized by law to require the witness's attendance for examination and to take testimony, the notary public, officer, board, or tribunal shall certify that fact to the judge of the district court of the county in which the witness resides or in which the witness may be present. The judge, by order, then shall require the witness to attend an examination before the judge at a specified time and place. Upon the return day of the order, the examination of the witness must be conducted before the judge, and for the failure of the witness to attend, or to be sworn, or to answer as a witness, or for a refusal of the witness to do any act required of the witness by law, the witness may be punished as for a contempt in the manner provided in this chapter.

**27-10-24. Appeal to supreme court from final order adjudging a person guilty of contempt.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-25. Undertaking for stay of execution of order on appeal in criminal contempt.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-26. Undertaking for stay of execution of order on appeal in civil contempts.**

Repealed by S.L. 1993, ch. 89, § 32.

**27-10-27. Undertaking on appeal in contempt where stay of execution not desired.**

Repealed by S.L. 1993, ch. 89, § 32.