



# HOUSE BILL 79: Contempt for 50C/Scope of Stay for Appeals

2015-2016 General Assembly

<b>Committee:</b>	House Judiciary II	<b>Date:</b>	March 10, 2015
<b>Introduced by:</b>	Reps. Glazier, Stevens, Zachary, Davis	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	PCS to First Edition H79-CSRN-1		Committee Counsel

**SUMMARY:** *House Bill 79 would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt. The Proposed Committee Substitute amends G.S. 1-294 to provide that when an appeal is perfected, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.*

## CURRENT LAW:

### I. Civil No-Contact Orders

Chapter 50C of the General Statutes addresses civil no-contact orders. A civil no-contact order is a court order which is designed to protect an individual from nonconsensual sexual conduct or stalking that has been committed by someone who is not involved a "personal relationship" under 50B-1(b).<sup>i</sup>

A judge may order the following types of relief under civil no-contact orders: (1) order the respondent not to visit or otherwise interfere with the victim, (2) order the respondent to cease stalking, abusing, or harassing the victim, (3) order the respondent not to contact the victim, and (4) order other relief deemed necessary by the court. G.S. 50C-5(b). Civil no-contact orders may be temporary (effective for not more than 10 days) or permanent (effective for up to one year) G.S. 50C-8(a)-(b). Violations of civil no-contact orders are punishable as "contempt of court." G.S. 50C-10.

### II. Criminal and Civil Contempt

"The line of demarcation between civil and criminal contempt is hazy at best." *Blue Jeans Corporation v. Amalgamated Clothing Workers of America, AFL-CIO*, 275 N.C. 503, 507-8 (1969). Generally, criminal contempt is used to punish a person for violating a court order or interrupting or disrespecting the court. Civil contempt is intended to make someone obey a court order. *Id.* Sometimes, a defendant's conduct may warrant either civil criminal contempt. A person cannot be held in both civil and criminal contempt for the same conduct, and the judge must choose one or the other. G.S. 5A-12(d) and G.S. 5A-21(c).

Criminal contempt may be imposed for specific grounds including, interruption of court proceedings, disrespect for the court, disobedience of the court's order, refusal to be sworn or answer questions, and any act specified in the General Statutes as grounds for criminal contempt. G.S. 5A-11(a). The standard of proof for criminal contempt is proof beyond a reasonable doubt. G.S. 5A-15(f). Generally, the punishment for criminal contempt is censure, imprisonment up to 30 days, a fine of not more than \$500 or a combination of the three. G.S. 5A-12.

Civil contempt is designed to coerce the defendant to comply with an order of the court. Failure to comply with an order of the court is a continuing civil contempt. G.S. 5A-21(a). An order of the court holding a person in contempt must specify how the person may purge himself of the contempt. G.S. 5A-



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22(a). The standard of proof is a preponderance of the evidence. The only sanction that the court may impose for civil contempt is imprisonment until the defendant complies with the court order. G.S. 5A-21.<sup>ii</sup> The total period of imprisonment for the same act of disobedience shall not exceed 12 months. *Id.*

## **BILL ANALYSIS:**

**Section 1** of the PCS would clarify that a knowing violation of a civil no-contact order is punishable by civil or criminal contempt.

**Section 2** of the PCS amends G.S. 1-294 to provide that when an appeal is perfected, it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure.

**EFFECTIVE DATE:** Section 1 becomes effective October 1, 2015, and applies to orders entered on or after that date. The remainder of the act is effective when it becomes law.

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<sup>i</sup> G.S. 50B covers domestic violence protective orders and applies to personal relationships "wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

<sup>ii</sup> For additional information on the difference between criminal and civil contempt, see "Contempt" by Michael Crowell, UNC School of Government, December 2013.