Chapter 10: Use of Contempt in Nonoffender Juvenile Court Proceedings

Written in 2011 and updated in 2014 by Patrick Dowd[1],[2]

Introduction

Every court of justice has the power to preserve and enforce order in its immediate presence, to enforce order in the proceedings before it, and to compel obedience to its judgments, decrees, orders, and process before the court.[3] For the effectual exercise of these powers, the court may punish contempt as provided for by law.[4]

"Contempt of Court" is defined as:

- Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
- Disobedience of any lawful judgment, decree, order, or process of the court;
- Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
- Refusal, without lawful authority, to produce a record, document, or other object.[5]

Contempt may be direct, occurring in the court's presence, or indirect, occurring outside of court.

A contempt proceeding may be civil or criminal depending on the purpose and nature of the sanction imposed.[6] A remedial sanction intended to coerce compliance with the court's order and that is within the contemnor's control is civil in nature, while a criminal contempt sanction is intended to punish a contemnor for past conduct for the purpose of upholding the courts authority.[7] Due process requirements vary depending on whether the sanctions imposed are remedial or punitive.

In addition to the statutory remedial and punitive contempt procedures set forth in RCW 7.21, the court also retains inherent contempt authority to impose punitive or remedial sanctions for contempt of court. However, before exercising that power, the court must specifically find that all statutory contempt remedies are inadequate.[8]

§10.1 Remedial Contempt of Court in At-Risk Youth (ARY), Child in Need of Services (CHINS), Dependency, and Truancy Proceedings

Failure of a party to comply with a court order in an At-Risk Youth (ARY), Child in Need of Services (CHINS), truancy, or dependency proceeding is civil contempt of court as provided in RCW 7.21.030.[9] The legislative intent underlying this statute is to provide the court with

remedial means to compel a child's compliance with the court's order and further the education and protection of the child, without resorting to the filing of criminal contempt charges.[10]

§10.1a Initiation of a Civil Contempt Proceeding

The court on its own motion or on the motion of a person aggrieved by a contempt of court may initiate a proceeding to impose a remedial sanction.[11] Due process requires adequate notice and the opportunity to be heard to answer allegations of contempt. In all ARY and CHINS proceedings, the court must verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. The court must treat the parents and the child equally for the purposes of applying contempt of court processes and penalties.[12] Rules of evidence apply in contempt proceedings.[13]

§10.1b Remedial Contempt Sanctions

If, after notice and a hearing, the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose remedial sanctions. Sanctions authorized by RCW 7.21.030 include the following:

- Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1)(b)–(d). The imprisonment may extend only so long as it serves a coercive purpose. In ARY, CHINS, dependency, and truancy cases, commitment to juvenile detention cannot exceed seven days;[14]
- A forfeiture not to exceed $2,000.00 for each day the contempt of court continues;
- An order designed to ensure compliance with a prior order of the court; and
- Any other remedial sanction if the court expressly finds that the sanctions described above would be ineffectual to terminate a continuing contempt of court.

In truancy cases, RCW 28A.225.090 provides additional remedial sanctions. For example, the court may impose alternatives to detention for a child such as community restitution. A parent in contempt may also be fined not more than $25.00 for each day of the child's unexcused absence from school. The court may order the parent to provide community restitution instead of imposing a fine. The statute also recognizes an affirmative defense if a parent shows that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties.[15]

§10.1c Limitations on Remedial Sanctions

Opportunity to Purge
Juvenile courts may impose detention as a remedial sanction for contempt so long as a proper purge condition provides the youth with the "keys" to his or her release. If there is no opportunity to purge, the detention is punitive rather than remedial.[16] Ordinarily, a child's promise to comply with the court's original order will purge an initial contempt. However, where such a promise is demonstrably unreliable, the court is entitled to reject the bare promise as

insufficient and impose a purge condition aimed at reassuring the court that the child will indeed comply with the court order.[17] Any purge condition that would satisfy the court of the juvenile's future compliance is permitted so long as the purge condition (1) serves remedial aims; (2) can be fulfilled by the child; (3) is reasonably related to the cause or nature of the contempt; and (4) is within the contemnor's capacity to complete at the time the sanction is imposed.[18] A detained youth should have the opportunity to fulfill a purge condition by the next available hearing day so as to present a request for release to the court at the earliest time.

Detention Cannot Exceed Seven Days

A child cannot be detained beyond seven days for civil contempt, even if the purge condition has not been met. The court cannot aggregate detention sanctions for multiple violations of a dispositional order.[19]

Remedial Sanction Must Retain its Coercive Effect

A remedial sanction is justified only on the theory that it will induce a specific act that the court has the right to coerce. Should it become clear that the remedial sanction will not produce the desired result, the justification for the sanction disappears. Further detention can be justified as a punishment for disobeying the court's orders, but only after a criminal proceeding to impose a punitive sanction.[20]

§10.2 Punitive Contempt of Court in At-Risk Youth (ARY), Child in Need of Services (CHINS), Dependency, and Truancy Proceedings

In juvenile nonoffender court proceedings, the statutory scheme addressing contempt of court focuses exclusively on civil contempt proceedings with remedial sanctions intended to assure compliance with the court's order. The legislative intent is to avoid criminal charges against youth who need guidance rather than punishment and to authorize a limited sanction of time in juvenile detention for failure to comply with court orders for the sole purpose of providing the courts with the tools necessary to enforce orders in these types of cases.[21]

The Washington State Supreme Court, however, concluded that in dependency cases, courts may utilize punitive contempt as well as remedial contempt to address a child's failure to comply with its order.[22] The court reasoned that the legislature did not expressly designate remedial contempt as the sole remedy in these cases and in fact, remedial contempt "may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter."[23] The court concluded that by amending the dependency contempt statute, the legislature did not intend to exclude the availability of punitive contempt sanctions in dependency cases, but instead, intended to merely create a new alternative sanction.[24] In *In re Silva*, the State Supreme Court determined that in rare circumstances, punitive contempt can also be imposed in ARY proceedings.

The court noted that ARY statutes were intended to provide counseling and treatment to aid and protect at-risk youth, not to punish and jail them. "[W]here statutory provisions are intended to treat and rehabilitate children, the last option a judge should consider is jail, where few, if any,

legislatively created programs do exist to help at-risk youth....[O]nly in the rarest of situations should incarceration as punishment be considered an option."[25] When punitive contempt sanctions are imposed in juvenile nonoffender court proceedings, the child is entitled to the same due process rights afforded criminal defendants. These due process rights include the initiation of a criminal action by filing of charges by the prosecutor, assistance of counsel, production of witnesses, the privilege against self-incrimination, a presumption of innocence, and proof beyond a reasonable doubt.[26]

§10.2a Criminal Contempt Procedures

An action to impose a punitive sanction for contempt of court must be initiated by a complaint or information, supported by probable cause, filed by the prosecuting attorney charging a person with contempt of court, and stating the punitive sanction sought to be imposed. A judge may request that the prosecuting attorney commence an action for punitive contempt. Courts, however, are not constrained to wait for a prosecutor to decide to take action and may appoint a special counsel to prosecute the action.[27] A judge requesting that a prosecutor or special counsel commence a contempt action is disqualified from presiding in the case. Similarly, if the alleged contempt involves disrespect to or criticism of a judge, that judge is also disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.[28]

§10.2b Punitive Contempt Sanctions

If an adult defendant is found guilty, the court may impose a punitive sanction of a fine of not more than $5,000.00 or imprisonment for not more than 364 days, or both, for each separate count of contempt.[29]

When a juvenile defendant is found guilty of a non-enumerated offense equivalent to an adult gross misdemeanor such as contempt,[30] the conviction is classified as a category D juvenile offense.[31] As a category D offense, each count of criminal contempt is punishable by confinement in a juvenile detention facility for up to 30 days, up to 12 months community supervision, up to 150 hours community restitution, and/or a fine up to $500.00.[32]

§10.2c Sanctions for Contempt Committed in the Presence of the Court

When contempt of court occurs within the courtroom, a judge may summarily impose either a remedial or punitive sanction if the judge certifies that he or she saw or heard the contempt.[33] The sanctions must be imposed either immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the court's authority and dignity.[34] The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. For each separate contempt of court, the judge may impose a punitive sanction of a fine of not more than $500.00 or imprisonment for not more than 30 days, or both, or a remedial sanction set forth in RCW 7.21.030(2).[35]

§10.3 Inherent Contempt Power of the Juvenile Court

In addition to the statutorily created remedial and punitive contempt powers, courts are vested with an inherent contempt authority, as a power necessary to the exercise of all others. As a division of the superior court, the inherent contempt power also extends to the juvenile court.[36]

§10.3a Limitations on the Use of Inherent Contempt

Courts may only exercise their inherent contempt power when the statutory contempt powers are specifically found inadequate.[37] "Only under the most egregious circumstances should the juvenile court exercise its contempt power to incarcerate a status offender in a secure facility. If such action is necessary, the record should demonstrate that all less restrictive alternatives have failed."[38]

Therefore, before resorting to its inherent contempt powers, the court must first try statutory remedial and punitive contempt sanctions, and specifically find them ineffective. The court should also examine the individual needs and circumstances of the child and consider less restrictive alternatives to detention before relying on contempt sanctions. For example, the court should consider whether the child is in need of mental health or chemical dependency services, including involuntary evaluation and treatment in secure facilities.[39]

Cases involving the juvenile court's use of its inherent contempt power often involve the court's attempt to protect the child from harmful influences. Division I of the Court of Appeals warned against "the desire to protect a juvenile from the risks of the street by locking him up" and determined that this is not an appropriate rationale for invoking inherent authority to punish for contempt. Rather it is up to the legislature and executive branches "to decide whether to develop an expensive program of involuntary confinement to address alcoholism, drug abuse, and other self-destructive behavior by juveniles."[40]

§10.3b Due Process

Due process requirements depend on the nature of the sanctions imposed. If the sanctions are punitive and there is no opportunity for the child to purge the contempt, then the proceeding is criminal in nature and the child must be afforded criminal due process rights. A court exercising its inherent contempt power must at a minimum follow the due process requirements a child must receive, as set forth in RCW 7.21.040, when imposing a punitive sanction.[41]

§10.3c Notice

Due process requires notice that is reasonably calculated to apprise a party of the proceedings that affect him or her. A child must be served with a motion seeking punitive sanctions under the juvenile court's inherent contempt authority and informing the child of the alleged contempt and potential sanctions, including the maximum penalty that could be imposed. However, an inherent contempt proceeding is not subject to the punitive contempt statute's specific requirement that the proceeding be initiated by a criminal information filed by the prosecuting attorney.

§10.3d Trial Rights and Waiver of Rights

A child facing punitive contempt sanctions has the rights to counsel, a speedy trial, call witnesses, cross examine witnesses, testify on his or her own behalf or remain silent, proof beyond a reasonable doubt, and appeal. Any stipulation to the alleged violations is, in effect, a guilty plea.[42] To comport with due process, a guilty plea must be made intelligently and voluntarily. The court must confirm that the child has been advised of and understands his or her due process rights. Without a colloquy to determine whether the child understands the rights he or she is waiving, a stipulation to violation of the court's orders cannot be held to be knowing and voluntary.[43]

§10.3e Sanctions

The court's inherent contempt power allows the court to impose sanctions beyond those prescribed by statute when the court finds that the statutory contempt provisions are inadequate. However, the sanction must be reasonable and related to the purpose of the juvenile court proceeding and the terms of the order violated. The appellate courts review these matters for an abuse of discretion, subject to constitutional prohibitions against cruel and unusual punishment.[44]

ENDNOTES

[1] Updated 2014

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[3] *See* RCW 2.28.0§10.

[4] RCW 2.28.020.

[5] RCW 7.21.010(1).

[6] *See generally* RCW 7.21. Statutes provides for either remedial or punitive sanctions, not civil or criminal. The civil/criminal distinction is made in case law to describe the due process protections required.

[7] RCW 7.21.010(2)–(3).

[8] *See In re A.K.*, 162 Wn.2d 632, 652–653, 174 P.3d 11 (2007).

[9] *See* RCW 13.32A.250 (ARY and CHINS); RCW 13.34.165 (Dependency); RCW 28A.225.090 (Truancy).

[10] RCW 7.21.030 (findings).

[11] In CHINS, ARY, and dependency cases, "[a] motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child. . . ." RCW 13.32A.250(5); RCW 13.34.165(4).

[12] RCW 13.32A.250(1).

[13] *See In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000) (Mother's testimony that caseworker told her that child's "prognosis" was poor and that he had tested positive for marijuana was hearsay, and should not have been admitted in ARY proceeding to hold juvenile in contempt.).

[14] RCW 7.21.030(2)(e).

[15] RCW 28A.225.090.

[16] *See In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000); *In re Dependency of M.H.*, 168 Wn. App 707, 278 P.3d 1145 (2012) (quoting *In re J.L.*, 140 Wn. App. 438, 448, 166 P.3d 776 (2007)).

[17] *Id*.

[18] *In re J.L.*, 140 Wn. App. at 448. *See also In re M.B.*, 101 Wn. App. at 451 (One permissible purge condition requires the juvenile to write a substantial paper with subject matter reasonably related to the nature and cause of the contempt; conversely, requiring the child to enter therapeutic foster care as soon as placement becomes available is inappropriate because it is contingent on factors beyond the child's control.)

[19] *In re N.M.*, 102 Wn. App. 537, 7 P.3d 878 (2000).

[20] *In re M.B.*, 101 Wn. App. 425.

[21] RCW 7.21.030 (findings).

[22] *See In re A.K.*, 162 Wn.2d 632.

[23] RCW 7.21.030(2)(e).

[24] *In re A.K.*, 162 Wn.2d at 652–53.

[25] *In re Silva*, 166 Wn.2d 133, 206 P.3d 1240 (2009).

[26] *In re M.B.*, 101 Wn. App. at 440.

[27] RCW 7.21.040(2)(c).

[28] RCW 7.21.040.

[29] *Id*. at (5).

[30] *See* RCW 9A.20.010(2)(b),; RCW 9A.20.021(2).

[31] RCW 13.40.0357.

[32] *Id*.

[33] RCW 7.21.050(1).

[34] *Id*.

[35] *Id*. at (2).

[36] *See In re Silva*, 166 Wn.2d 133; *In re A.K.*, 162 Wn.2d 632.

[37] *Id*. *See also State v. Salazar*, 170 Wn. App. 486 (2012).

[38] *Id*. at 647 (citing *State v. Norlund*, 31 Wn. App. 725, 644 P.2d 724 (1982).

[39] RCW 70.96A.140; RCW 70.96A.245; and RCW 71.34.600.

[40] *In re Mowery*, 141 Wn. App. 263, 285–286, 169 P.3d 835 (2007).

[41] *In re Silva*, 166 Wn.2d 133.

[42] *See M.B.*, 101 Wn. App. at 439–40.

[43] *State v. S.M.*, 100 Wn. App. 401, 413, 996 P.2d 1111 (2000).

[44] *Keller v. Keller*, 52 Wn.2d 84, 90, 323 P.2d 231 (1958); *Shafer v.Bloomer*, 94 Wn. App. 246, 973 P.2d 1062 (1999).