

CHAPTER 785

CONTEMPT OF COURT

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NOTE: Chapter 257, laws of 1979, which repealed and recreated this chapter of the statutes, contains notes by the Judicial Council explaining the revision. See also — Contempt of Court: Eliminating the Confusion between Civil and Criminal Contempt. Martineau. 50 Cincinnati L. Rev. 677 (1981).

785.01 Definitions. In this chapter:

- (1) “Contempt of court” means intentional:
- (a) Misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court;
 - (b) Disobedience, resistance or obstruction of the authority, process or order of a court;
 - (bm) Violation of any provision of s. 767.087 (1);
 - (c) Refusal as a witness to appear, be sworn or answer a question; or
 - (d) Refusal to produce a record, document or other object.
- (2) “Punitive sanction” means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.
- (3) “Remedial sanction” means a sanction imposed for the purpose of terminating a continuing contempt of court.

History: 1979 c. 257; 1983 a. 189; 1993 a. 78.

785.02 Power of court to punish for contempt of court. A court of record may impose a remedial or punitive sanction for contempt of court under this chapter.

History: 1979 c. 257.

Juvenile was improperly held in contempt of court, since court did not sufficiently consider less restrictive alternative dispositions. Contempt power in juvenile cases discussed. In Interest of D.L.D. 110 W (2d) 168, 327 NW (2d) 682 (1983).

When a contemnor’s liberty interests are at risk he or she must be given an opportunity to show the court that the failure to comply with purge conditions was not wilful and intentional. V.J.H. v. C.A.B. 163 W (2d) 833, 472 NW (2d) 939 (Ct. App. 1991).

Necessary conditions for imposition of summary contempt enumerated. Extreme intoxication of criminal defendant at sentencing hearing was properly punished by summary contempt. Shepard v. Outagamie County Circuit Court, 189 W (2d) 279, 525 NW (2d) 769 (Ct. App. 1994).

Courts may hold juveniles in contempt of court; limited circumstances under which sanction of imprisonment may be imposed discussed. 70 Atty. Gen. 98.

Contempt of court: Wisconsin’s erasure of the blurred distinction between civil and criminal contempt. 66 MLR 369 (1983).

785.03 Procedure. (1) NONSUMMARY PROCEDURE. (a) Remedial sanction. A person aggrieved by a 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.

(b) Punitive sanction. The district 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 district attorney, attorney general or special prosecutor may issue the complaint on his or her own initiative or on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. The complaint shall be processed under chs. 967 to 973. If the contempt alleged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt

unless the person charged consents to the judge presiding at the trial.

(c) Joint hearing and trial. 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) SUMMARY PROCEDURE. The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits a 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) APPEAL. A defendant aggrieved by a determination under this chapter may appeal in accordance with s. 809.30 if the proceeding was prosecuted by the state.

History: 1979 c. 257; 1983 a. 377.

Juvenile court contempt procedures discussed. In re Contempt Finding Against B.L.P. 118 W (2d) 33, 345 NW (2d) 510 (Ct. App. 1984).

Contempt proceeding prosecuted by family court commissioner under 767.29 (1) was “prosecuted by the state” within meaning of 785.03 (3). In re Marriage of Biel v. Biel, 130 W (2d) 335, 387 NW (2d) 295 (Ct. App. 1986).

Contemnor has right to allocation in summary contempt proceedings. Contempt in State v. Dewerth, 139 W (2d) 544, 407 NW (2d) 862 (1987).

Because trial court had no personal knowledge of circumstances surrounding subpoenaed witness’s failure to appear, (2) summary procedures were inappropriate. Matter of Contempt in State v. Levin, 146 W (2d) 166, 430 NW (2d) 718 (Ct. App. 1988).

Summary contempt proceeding is not “prosecuted by the state” and appeal is pursuant to 808.04 (1). Matter of Contempt in State v. Simmons, 150 W (2d) 178, 441 NW (2d) 308 (Ct. App. 1989).

Attorney’s tardiness is not contempt committed in actual presence of court; summary procedure under (2) is, therefore, unavailable. Gower v. Marinette County Circuit Court, 154 W (2d) 1, 452 NW (2d) 354 (1990).

Sentence requiring imprisonment for definite period of time without possibility of purging through compliance with court order is permitted only via punitive sanction proceedings. State ex rel. N.A. v. G.S., 156 W (2d) 338, 456 NW (2d) 867 (Ct. App. 1990).

Defense counsel’s audible remark, “ridiculous”, uttered upon entry of the sentence against her client sufficiently impinged on the court’s ability to discharge its duties to warrant the use of summary contempt proceedings, but failure to allow allocation rendered order unenforceable. Olivetto v. Crawford County Cir. Court, 194 W (2d) 419, 533 NW (2d) 819 (1995).

A remedial sanction must be purgeable. A punitive sanction need not be purgeable but may only be imposed after provision of due process, proceeding under sub. (1) (b). In re Paternity of Cy C. J. 196 W (2d) 964, 539 NW (2d) 703 (Ct. App. 1995).

A nonsummary contempt motion is a part of the underlying action from which it arises, and the time allowed for requesting judicial substitution runs from the commencement of the action, not from receipt of notice of the contempt proceeding. James L. J. v. Walworth County Circuit Court, 200 W (2d) 496, 546 NW (2d) 460 (1996).

When a defendant’s liberty is threatened in a remedial contempt action, the court must advise the defendant of the right to appointed counsel if the defendant is indigent. The circuit court must initiate a colloquy clearly conveying the right to the defendant and inquiring whether the defendant believes himself or herself indigent. State v. Pultz, 206 W (2d) 111, 556 NW (2d) 708 (1996).

785.04 Sanctions authorized. (1) REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

(b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (bm), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(2) PUNITIVE SANCTION. (a) *Nonsummary procedure.* A court, after a finding of contempt of court in a nonsummary procedure under s. 785.03 (1) (b), may impose for each separate contempt of court a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year or both.

(b) *Summary procedure.* A court, after a finding of contempt of court in a summary procedure under s. 785.03 (2), may impose for each separate contempt of court a fine of not more than \$500 or imprisonment in the county jail for not more than 30 days or both.

(3) PAST CONDUCT. A punitive sanction may be imposed for past conduct which was a contempt of court even though similar present conduct is a continuing contempt of court.

History: 1979 c. 257; 1993 a. 78.

Court may award attorney fees and other litigation costs under (1) (a). Town of Seymour v. City of Eau Claire, 112 W (2d) 313, 332 NW (2d) 821 (Ct. App. 1983).

Purge condition must be within power of contemnor and be reasonably related to cause or nature of the contempt. In re Marriage of Larsen v. Larsen, 159 W (2d) 672, 465 NW (2d) 225 (Ct. App. 1990).

785.05 Limitation on imprisonment. In any case in which the contempt of court is based upon interference with visitation rights granted under s. 48.925 (1), or upon failure to respond to a citation, summons or warrant under s. 345.28 or any other failure to pay or to appear in court for a nonmoving traffic violation, the court may not impose imprisonment as a sanction under this chapter.

History: 1981 c. 165; 1991 a. 191.

785.06 Court commissioners, municipal courts and administrative agencies. A court commissioner, municipal court or state administrative agency conducting an action or proceeding or a party to the action or proceeding may petition the circuit court in the county in which the action or proceeding is being conducted for a remedial or punitive sanction specified in s. 785.04 for conduct specified in s. 785.01 in the action or proceeding.

History: 1979 c. 257.

See note to 767.29, citing State ex rel. Stedman v. Rohner, 149 W (2d) 146, 438 NW (2d) 585 (1989).