

<h2>Direct Criminal</h2> <p>Standard of Proof = Beyond a Reasonable Doubt</p> <p>Goal = To Punish Willful Disobedience or Open disrespect for Court or order</p> <p>Where/When= Within the Court's presence (sight or sound)</p> <p>Procedure = May summarily adjudicate and punish so long as the sentence is less than six months.</p> <p>Counsel= not required</p> <p>Example= party acts out during the proceeding</p>	<h2>Indirect Criminal</h2> <p>Standard of Proof = Beyond a Reasonable Doubt</p> <p>Goal= To Punish will disobedience or open disrespect for court's orders</p> <p>Where/When= Outside of Court's presence</p> <p>Procedure = Due Process Required (Notice, Hearing, Separate Sentencing). Cannot sentence to more than 6 months without a jury.</p> <p>Counsel= required or a waiver required</p> <p>Example= Party violates a no contact order</p>
<h2>Direct Civil</h2> <p>Standard of Proof= Clear and convincing</p> <p>Goal= To compel compliance with a Court Order or requirement generally for the benefit of a litigant</p> <p>Where/When= in the presence of the Court</p> <p>Procedure= the act must be doable (not impossible) but can be summarily adjudicated. A purge is required. Purge must be something the litigant can do. No jury required so long as the litigant carries "the keys to their prison in their own pockets."</p> <p>Counsel= not required.</p> <p>Example= A witness refuses to answer a question</p>	<h2>Indirect Civil</h2> <p>Standard of Proof= Clear and convincing Burden is on the person seeking enforcement.</p> <p>Inability to comply must be proven by the person asserting the defense by clear and convincing standard after the petitioner has met the burden of proving contempt.</p> <p>Goal= to compel compliance with an Order generally for the benefit of a litigant</p> <p>Where/When= outside of Court's presence</p> <p>Procedure= due process required (notice, opportunity to be heard, separate sentencing) purge is required.</p> <p>Counsel= required or a waiver required</p> <p>Example= Failure to pay restitution as ordered</p>

Revocation of a Probated or Conditionally Discharged Sentence – Revocation is NOT a second contempt proceeding. Rather, it is the related but separate matter of Court enforcing its own orders. The contempt should have been found prior to the sentence being imposed. However, like a contempt proceeding the Court MUST find (1) that the obligor has the ability to person the condition and (2) that alternatives to incarceration are not appropriate.

Case Law Addressing Contempt:

- ***Lewis v. Lewis*, 875 S.W.2d 862 (Ky. 1993)**- An indigent person has the right to appointed counsel in contempt proceedings. This includes civil contempt, which is a serious crime.
- ***U.S. v. Dixon*, 509 U.S. 688, 113 S.Ct. 2849, 125 L.Ed. 556 (1993)**- a finding of criminal contempt may preclude prosecution for the same conduct underlying the finding of contempt.
- ***Leisbon v. Taylor*, 721 S.W.2d 690, 692 (Ky. 1986) (overruled on other grounds)** – there is always a right to appeal a finding of contempt.
- **KRS 31.100(4)(c)**- A serious crime is any legal action which could result in detainment of a defendant. (Explaining the need for counsel for contempt proceedings).
- ***Com. v. Burge*, 947 S.W.2d 805 (Ky. 1997)**- a good overview of contempt and how to distinguish criminal and civil contempt. Also a good discussion of how double jeopardy can affect the prosecution of underlying criminal acts when also punished by contempt.
- ***Com. v. Marshall*, 345 S.W.3d 822 (Ky. 2011)**- in making a finding that non-payment constitutes contempt the Court MUST make a finding that the debtor has the ability to pay. The finding is that the payor has not made “sufficient bona fide efforts” to make payments. This finding must be included a guilty plea or admission as well.
 - In revoking a probated or conditionally discharged sentence after a finding of contempt the revocation itself is not a finding of contempt. However, the Court must make a finding that **(1) the payor made a bona fide attempt to make payments and (2) that the Court has considered alternatives to imprisonment.**
- ***Com. v. Ivy*, 353 S.W.3d 324 (Ky. 2012)**- The burden of proof in civil contempt is clear and convincing. The burden of proof is on the party seeking contempt. The burden then shifts to the obligor if they are asserting inability. Inability to comply must be proven by clear and convincing evidence. This is a high standard that requires that a person show they have made ALL reasonable efforts to comply. Notably, although the minimum child support obligation of \$60 does not depend upon an ability to pay, collection via contempt does require a finding that there is an ability to pay.
- ***Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed. 221 (1983)**- In revoking probation due to failure to pay restitution, the Court must find that the payor (1) has the ability to pay the amount due and (2) consider whether an alternative to imprisonment is appropriate.

- ***Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed. 522 (1968)**- criminal contempt is a petty criminal offense and thus no jury is needed unless the punishment makes it a serious offense. A judge may also summarily punish direct criminal contempt unless it contemplates a serious punishment.
- ***Shillitani v. U.S.*, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed. 2d 622 (1966)**- A jury is not required when a court uses incarceration as a means of coercing compliance (i.e. use of civil contempt). Because the obligor carries the keys to their prison in their own pockets the length of the incarceration is not material. The obligor is eligible for release with compliance. The incarceration is civil and designed to promote compliance.
- ***Pounders v. Watson*, 521 U.S. 982, 117 S.Ct. 2359, 138 L.Ed. 2d 976 (1997)** – the court may summarily adjudicate and punish direct contempt so long as the sentence is less than six months.
- ***U.S. v. Wilson*, 421 U.S. 309, 95 S.Ct. 1802, 44 L.Ed. 186 (1975)** – the court may summarily compel obedience of a witness
- ***Waddell v. Commonwealth*, 893 S.W.2d 376, 381 (Ky. App. 1995)**- flagrant no-support is NOT a type of contempt proceeding. KRS 530.050 does not impose a punishment for debt. Rather, the crime is meant to “redress the intentional abandonment of one’s legal responsibilities.”
- ***§18 Kentucky Constitution*** - we do not punish debt with imprisonment
- ***Sidebottom v. Watershed Equine, LLC*, 564 S.W.3d 331 (Ky.App. 2018)** - §18 prevents incarceration for failure to pay in some circumstances? Case involves post-judgment attempts to collect moneys owed from civil judgment.
- ***C.S. v. Commonwealth*, 559 S.W.3d 857 (Ky.App. 2018)** – In juvenile status context, court cannot use indirect criminal contempt to punish/enforce pre-adjudicative court orders
- ***Nienaber v. Commonwealth*, 594 S.W.3d 232 (Ky.App. 2020)** – Purge amount in civil contempt must be supported by substantial evidence in the record, cannot be an arbitrary amount
- ***Crandell v. Cabinet for Health and Family Services ex rel. Dilke*, 642 S.W.3d 686 (Ky. 2022)** – Court cannot set punishment before contempt occurs, even if it has occurred repeatedly in the past.