

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1590

INTRODUCER: Judiciary Committee and Senator Powell

SUBJECT: Juror Sanctions

DATE: February 5, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1590 revises the sanctions that a court may impose on someone who is duly summoned for jury duty but fails to attend and does not provide a sufficient excuse to the court. Currently, a court “shall” impose a fine on the violator that does not exceed \$100 and may hold the person in contempt of court, which may result in imprisonment.

The bill authorizes a court to impose any combination of the following sanctions on a person who is summoned to attend as a juror but fails to attend and does not provide a sufficient excuse:

- A fine that does not exceed \$1,000.
- A term of imprisonment that does not exceed 3 days.
- An order to perform community service.

In addition to these sanctions, the court may consider the failure of a person to attend without providing a sufficient excuse to be contempt of court. The court may not impose a penalty of imprisonment on that person unless he or she is able to obtain legal representation.

The bill takes effect upon becoming a law.

II. Present Situation:

Jury Duty

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.¹

If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she:

- Must pay a fine that does not exceed \$100, which will be imposed by the court, and
- May be held in contempt of court.²

The statute does not specify or limit the sanctions a court may impose for contempt of court.

Recent Events Involving the Imposition of Contempt of Court for Missing Jury Duty

According to media reports, on August 20, 2019, Deandre Somerville, age 21 of West Palm Beach, was selected for jury duty to begin the following day. He overslept, did not attend, and did not call the court with an explanation. His absence resulted in a 45 minute delay in court proceedings that day.

Several weeks later the police arrested Mr. Somerville at home. Circuit Court Judge John Kastrenakes found Deandre Somerville in criminal contempt of court and sentenced him to 10 days in jail, 12 months of probation, 150 hours of community service, a \$233 fine, and required him to write a letter of apology. Mr. Somerville served the 10 days' jail time. After Mr. Somerville read his letter of apology in court, the judge said he believed the letter was sincere and he was satisfied that Mr. Somerville was "totally rehabilitated." The sentence was reduced to three months of probation and 30 hours of community service. The sentence was later vacated.³

Contempt of Court

"Contempt" is generally characterized as behavior that defies the authority of a court. Because the behavior interferes with or hinders the administration of justice, it may be punished by a fine or imprisonment.⁴

Contempt authority has been described as one of the most essential powers a court possesses to protect itself against people who do not regard the court's dignity or authority. It also exists to ensure that government functions in an orderly fashion. The court's authority to punish someone

¹ Section 40.23(1), F.S.

² Section 40.23(3), F.S.

³ John Bacon, USA Today, *Judge clears record of 21-year-old jailed 10 days for oversleeping jury duty: 'Totally rehabilitated'* (Oct. 8, 2019) <https://www.usatoday.com/story/news/nation/2019/10/08/deandre-somerville-record-cleared-florida-judge-john-kastrenakes/3906219002/> and Hannah Winston, The Palm Beach Post, *In contempt cases, Kastrenakes toughest judge on jurors* (Nov. 8, 2019) <https://www.palmbeachpost.com/news/20191108/in-contempt-cases-kastrenakes-toughest-judge-on-jurors>.

⁴ BLACK'S LAW DICTIONARY (11th ed. 2019).

for contempt is inherent and exists independently of a legislative grant of authority.^{5,6} Because contempt authority is inherently vested in the judicial branch and because it existed at common law for centuries, additional grants of contempt authority are not found throughout the statutes.

It should be noted, however, that there is no provision in statute that requires a court to hold someone in contempt.⁷ In realizing the tremendous reach and breadth of contempt powers, courts have recognized the need to exercise restraint. In a 1994 Florida Supreme Court opinion reprimanding a judge for his abuse of his contempt authority, the Court stated:

Nevertheless, although the power of contempt is an extremely important power for the judiciary, it is also a very awesome power and is one that should never be abused . . . As such, it is critical that the exercise of this contempt power never be used by a judge in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice.⁸

Accordingly, the exercise of a court's contempt power must be used only rarely,⁹ with caution and with restraint.¹⁰

Criminal and Civil Contempt, Direct and Indirect Contempt

Contempt of court may be classified in a variety of forms. It may be criminal or civil or even direct or indirect.¹¹

There are generally two broad forms of contempt charges: criminal and civil. A primary distinction between the two is that criminal contempt is punitive and civil contempt is remedial. Criminal contempt imposes a sanction that cannot be avoided while civil contempt provides an incentive that allows the person held in contempt to avoid or minimize the sanction by demonstrating compliance with a court order. In spite of the formulas developed to classify criminal and civil contempt, there are instances when contempt is not completely civil or criminal but an act that has characteristics of both.¹²

Criminal Contempt

Criminal contempt is behavior that obstructs or interferes with the administration of justice by the courts. It is conduct directed against a court's authority and dignity. The criminal contempt sanction is focused on punishing intentional violations of court orders as well as vindicating a court's authority. For someone to be held in criminal contempt there must be an element of

⁵ 11 FLA. JUR 2D s. 6 *Contempt* (2019). See also, *Walker v. Bentley*, 678 So. 2d 1265 (1996).

⁶ According to case law and additional resources, the following people are among those who have been held in contempt: parties to a legal proceeding, prospective jurors, attorneys, witnesses, county commissioners, municipal officers, judges in lower courts who do not answer an order to show cause, and judges who act contrary to an order of a superior court. 11 FLA. JUR 2D s. 5 *Contempt* (2019).

⁷ 11 FLA. JUR 2D s. 7 *Contempt* (2019).

⁸ *In re Inquiry Concerning a Judge, Daniel W. Perry*, 641 So. 2d 366, 368 (1994).

⁹ *McRoy v. State*, 31 So. 3d 273 (Fla. 5th DCA 2010).

¹⁰ *M.L., a child v. State*, 819 So. 2d 240, 242 (Fla. 2d DCA 2002).

¹¹ 11 FLA. JUR 2D s. 2 *Contempt* (2019).

¹² *Id.*

willfulness such as a willful act or omission that is designed to hinder the functioning of the court. Criminal contempt is considered a common law crime that is not categorized in statute as a felony or a misdemeanor.¹³

Civil Contempt

In contrast, civil contempt is not considered a felony or a misdemeanor but rather a power held by the courts. It consists of failing to do an act that a court in a civil case has ordered someone to do for the benefit of the opposing party. The purpose of the sanction is to compel a party to act in compliance with the court's order. For a court to hold someone in civil contempt there must be an element of intent to violate a court order.¹⁴

Direct and Indirect Contempt

Criminal contempt proceedings are further classified as either direct or indirect contempt. For an offense to be considered direct criminal contempt, all of the acts underlying the conduct must be committed in open court and in the presence of the judge. In contrast, indirect criminal contempt involves conduct committed outside the presence of the court or where the act was committed in the presence of the court but the judge needs to rely on statements or additional witness testimony to reach a conclusion.¹⁵

Although it may seem unusual and contrary to constitutional guarantees, the U.S. Supreme Court first held in 1888 that a judge has the inherent authority to immediately punish a person for direct contempt of court by imposing a fine or imprisonment without also providing notice or a special hearing on the accusation.¹⁶

In 2016, the Florida Supreme Court addressed the distinctions between direct and indirect contempt in *Plank v. State*.¹⁷ The case involved a prospective juror who appeared for jury duty impaired by alcohol and with the capacity to fall asleep during jury selection. After the judge questioned Mr. Plank and received the results of a breathalyzer test, the judge held a contempt hearing concerning Mr. Plank's conduct during jury selection. The court found Mr. Plank in direct criminal contempt of court for coming to the courthouse drunk, disrupting jury selection, and distracting other jurors. He was sentenced to 30 days in jail because the trial court found his actions were directed against the court's authority and dignity, were determined to interfere with the judicial function, and tended to "embarrass, hinder or obstruct the Court in the administration of justice and to lessen the Court's dignity."^{18,19}

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Plank v. State*, 190 So. 3d 594, 606 (Fla. 2016).

¹⁶ *In re Terry*, 128 U.S. 289 (1888).

¹⁷ *Id.*

¹⁸ *Plank* at 599.

¹⁹ Seventeen days after the court imposed sentence, the trial judge mitigated the sentence to time served and ordered that the defendant be released immediately.

On appeal, the Florida Supreme Court noted that the district courts of appeal were split in determining whether, in a direct criminal contempt proceeding, a person is entitled to an attorney before incarceration may be imposed as punishment.²⁰ The Court ultimately held:

[T]hat a trial court is not required to appoint counsel or give the individual an opportunity to seek counsel in a direct criminal contempt proceeding, even if incarceration is imposed as punishment, as long as the period of incarceration does not exceed six months—the point at which the defendant’s Sixth amendment rights are triggered.²¹

The Court decided that the trial court committed error in classifying Mr. Plank’s conduct as *direct criminal contempt* and should have treated the case as *indirect criminal contempt* because the judge also needed to rely on testimony about contemptuous acts that occurred outside her presence to reach her conclusion. Accordingly, the trial court should have relied upon the procedural rules for indirect criminal contempt which include the right to counsel. The Court did note, however, that in spite of the constitutional guarantee of the right to counsel, the nation’s courts “have long had the inherent authority to impose immediate penalties in direct criminal contempt proceedings, where the misconduct occurred within the court’s direct view and interfered with the court’s ability to discharge its essential functions.”²²

In discussing the “unusual power” to punish direct criminal contempt, the Court noted that the judge is the prosecutor who sits in judgment over the defendant who is accused of assailing the court’s dignity. That particular circumstance is not condoned anywhere else in law, and for that reason, the Court stated, the power must be used cautiously and sparingly.²³

The Right to Legal Counsel before Incarceration is Imposed

Mr. Plank’s legal team argued on appeal that s. 27.51, F.S., pertaining to the appointment of a public defender to represent an indigent person, required the appointment of legal counsel before a trial court could act immediately on direct criminal contempt that had just occurred in the court’s presence. The Court rejected the contention and said that nothing in the statute required the trial court to appoint counsel before acting to punish conduct “to prevent the demoralization of the court’s authority before the public.”²⁴

In contrast, the Court concluded that in proceedings for indirect criminal contempt,²⁵ which involve conduct that is committed outside of the court’s presence, a defendant is entitled to be represented by legal counsel at a contempt hearing.

²⁰ The Sixth Amendment to the United States Constitution provides, in part, that “In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defence.” The analogous right to counsel in the State Constitution is contained in Article I, section 16.

²¹ *Plank* at 600.

²² *Plank* at 601.

²³ *Plank* at 605.

²⁴ *Plank* at 603.

²⁵ Indirect criminal contempt is governed by Florida rule of Criminal Procedure 3.840.

Does Missing Jury Duty Occur in the Court's Presence?

It seems that reasonable people and courts may and will disagree over whether someone's absence from jury duty occurs in or out of the presence of a court. One case that is instructive involved a criminal contempt matter in which a respondent failed to appear pursuant to a court order. The defendant was held in civil contempt for not complying with an underlying matter, and then held in direct criminal contempt for failing to appear in court to answer questions regarding the underlying matter. The state was joined as an indispensable party on appeal and it recommended that the failure to appear be treated as indirect contempt and the Florida Supreme Court agreed. The Court reasoned that intent is an essential element of contempt and to support a conviction for direct criminal contempt, a court must have knowledge of each element of contempt. Because each act associated with a failure to appear does not occur in the court's actual presence, it does not constitute direct criminal contempt.²⁶

Based upon this reasoning, the Court said that a failure to appear in court will result in a charge of indirect criminal contempt, and Florida Rule of Criminal Procedure 3.840 must be followed. The rule requires additional procedural protections including a defendant's right to be represented by counsel, have compulsory process for the attendance of witnesses, and the ability of the defendant to testify in his or her own defense.

The Separation of Powers Doctrine and Legislative Authority to Limit Contempt Sanctions

Any effort by the Legislature to limit the power of the courts to hold someone in contempt for failing to perform jury service implicates the separation of powers doctrine. The State Constitution establishes the separation of powers among the legislative, executive, and judicial branches of government. The Constitution states that:

“No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless provided herein.”²⁷

Therefore, when the legislative branch seeks to limit the judicial branch's inherent authority to punish contempt charges, it should exercise caution.

In an 1866 decision, *Ex parte Edwards*,²⁸ the Florida Supreme Court stated that

[I]n the absence of statutory restrictions or limitations, the power of the courts over contempts is omnipotent and its exercise is not to be enquired into by any other tribunal.”

The Court noted that “this unrestricted power” had never been seriously questioned in England nor in the (relatively young at that time) United States. However, the opinion then stated that the genius of the American people, who are “ever sensitively jealous of restraints upon the personal liberty of the citizen” had caused restraints “through the action of the legislative department, to limit and restrict this common law power of the courts.” The action of the Legislature gave the

²⁶ *State v. Diaz de la Portilla*, 177 So. 3d 965 (Fla. 2015).

²⁷ FLA. CONST. art. II, s. 3.

²⁸ *Ex parte Edwards*, 11 Fla. 174 (1866).

courts the authority to punish contempts by payment of a fine or imprisonment, but not otherwise. The fine could not exceed \$100 and the imprisonment could not exceed 30 days. The Court concluded that the statute limiting contempt punishments “arises entirely from the enactment of our statute limiting the power of the courts to punish for contempts.”

In 1930, the Florida Supreme Court again addressed the courts’ scope and authority over contempt powers. In *State v. Lehman*,²⁹ the Court quoted from the *Edwards* decision but noted that the language must be construed in light of the principle that even the courts’ power to punish for contempt is limited by the Bill of Rights and that no court may impose punishments that are indefinite or cruel and unusual. The Court concluded by saying that it was not its place to say what punishment should be imposed for contempt of court as long as the punishment is imposed within the limitations established by the Constitution and laws.

In 1992, the Florida Supreme Court³⁰ reviewed several cases in which juveniles were incarcerated for contempt of court. The most relevant quotation from the case addressed the use of contempt and sanction powers. The Court held:

It is beyond question that the legislature has the power to determine how and to what extent the courts may punish criminal conduct, including contempt. Thus, although it has been recognized that courts have both an inherent and a statutory power to make a finding of contempt . . . the sanctions to be used by the courts in punishing contempt may properly be limited by statute.³¹

In 1996, the Florida Supreme Court again addressed the issue of contempt powers in *Walker v. Bentley*.³² The Legislature amended a 1994 statute and attempted to eliminate a circuit court’s use of indirect criminal contempt as a means to enforce compliance with injunctions for protection against domestic violence. The Court also noted that the Legislature may limit by statute the sanctions to be used by the courts to punish contempt. But the Court concluded that the Legislature may not eliminate a circuit court’s ability to apply the “inherent power of civil or criminal contempt.” In summary fashion, the Court stated that:

Any legislative enactment that purports to do away with the inherent power of contempt directly affects a separate and distinct function of the judicial branch” and is therefore, a violation of the separation of powers doctrine.³³

From these cases it is apparent that the courts have not offered clear guidance on how the scope of contempt authority may be regulated. Some cases have upheld limitations on contempt powers while others have overturned them as being impermissible restrictions on the judiciary’s authority.

²⁹ *State v. Lehman*, 129 So. 818 (1930).

³⁰ *A.A. v. Rolle*, 604 So. 2d 813, 815 (1992).

³¹ *Id.* at 815.

³² *Walker v. Bentley*, 678 So. 2d 1265 (1996).

³³ *Id.* at 1267.

Federal Law

Under federal law, a person who fails to appear for jury service and who was not excused by the court may be ordered to appear and show cause as to why he or she failed to comply with the jury service summons. That failure to appear or failure to show good cause for failing to report may result in:

- A fine of \$1000,
- Imprisonment up to three days,
- An order to perform community service, or
- Any combination of those three measures.³⁴

III. Effect of Proposed Changes:

The bill amends the current law governing the sanctions that a court may impose on a person who is duly summoned for jury duty but who fails to attend without providing a sufficient excuse. Currently, a court “shall” impose a fine that does not exceed \$100, and the court has the discretion to consider the failure to attend as an act of contempt of court. The current statute does not state or limit what sanctions may be imposed as a punishment for contempt of court.

The bill authorizes a court to impose any combination of the following sanctions on a person who is summoned to attend as a juror but fails to attend and does not provide a sufficient excuse:

- A fine that does not exceed \$1,000.
- A term of imprisonment that does not exceed 3 days.
- An order to perform community service.

In addition to these sanctions, the court may consider the person’s failure to attend and the absence of a sufficient excuse to be an act of contempt of court. However, the court may not impose a sanction of imprisonment on that person unless he or she is able to obtain legal representation.

The maximum fine, limit on the term of imprisonment, and order to perform community service mirror the federal law³⁵ as discussed in the Present Situation.

The contempt provision, which prohibits a court from imposing a term of imprisonment unless the person is able to obtain legal representation, appears to be consistent with decisions in this area. Because the Florida Supreme Court has determined that a person’s failure to appear in court is not a *direct act of criminal contempt*, but an *indirect act of criminal contempt*, Florida Rule of Criminal Procedure 3.840 applies. The rule provides that “The defendant is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and testify in his or her own defense.”³⁶

The bill takes effect upon becoming a law.

³⁴ 28 U.S.C. ss. 1864(b) and 1866(g).

³⁵ *Id.*

³⁶ Fla. R. Crim. P. 3.840(d).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 40.23 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 4, 2020:

The committee substitute differs from the underlying bill by establishing four specific limits on sanctions that a court may impose for missing jury duty. The court may impose a fine that does not exceed \$1,000, impose imprisonment that does not exceed 3 days, and order community service. Additionally, the court is prohibited from imposing a term of imprisonment for contempt of court unless the defendant is able to obtain legal representation.

- B. **Amendments:**

None.