

1 **10-169. Criminal contempt.**

2           A.     **Scope.** This rule addresses the inherent and statutory powers of the court to impose  
3 punitive sanctions for criminal contempt of court. This rule shall not apply to the imposition of  
4 other sanctions specifically authorized by these rules, statute, or the common law, or to the  
5 imposition of remedial sanctions for civil contempt of court.

6           B.     **Definitions.**

7                   (1)     “Contempt” or “contemptuous conduct” includes but is not limited to

8                           (a)     disorderly conduct, insolent behavior, or a breach of peace, noise, or  
9 other disturbance, if such behavior actually obstructs or hinders the administration of justice or  
10 tends to diminish the court’s authority;

11                           (b)     misconduct of court officers in official transactions; or

12                           (c)     disobedience of any lawful order, rule, or process of the court.

13                   (2)     “Direct contempt” means contemptuous conduct committed in the  
14 immediate presence of the court that is personally observed by the judge.

15                   (3)     “Indirect contempt” means contemptuous conduct that occurs outside the  
16 presence of the court, or conduct that is not personally observed by the judge and requires further  
17 fact finding.

18                   (4)     “Punitive sanction” means a sentence imposed to punish a person for  
19 committing an act of criminal contempt and may include a reprimand or unconditional fine or  
20 unconditional sentence of imprisonment.

21           C.     **Criminal contempt.**

22                   (1)     **Adult.** The children’s court shall hold an adult in direct or indirect criminal  
23 contempt of court only as provided by Rule 1-093 NMRA.

1                   (2)    **Child.** The children’s court shall not hold a child in direct or indirect  
2 criminal contempt of court. Nothing in this rule shall affect the authority of the children’s court to  
3 hold a child in civil contempt of court.

4 [Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on  
5 or after December 31, 2017; suspended by Supreme Court Order No. 21-8300-032, effective  
6 November 22, 2021, until further order of the Court.]

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8    **Committee commentary.** — Judicial powers of contempt provide courts with authority to enforce  
9 orders and protect the dignity of the court. New Mexico law classifies contempts of court as either  
10 civil or criminal. *See Concha v. Sanchez*, 2011-NMSC-031, ¶ 24, 150 N.M. 268, 258 P.3d 1060.  
11 Civil contempt sanctions are remedial and may be imposed as coercive measures to compel a  
12 person to comply with an order of the court or to enforce the rights of a private party to a  
13 lawsuit. *Id.* ¶ 25; *State ex rel. Bliss v. Greenwood*, 1957-NMSC-071, ¶ 6, 63 N.M. 156, 315 P.2d  
14 223. A person held in civil contempt “carries the keys to his prison” and can end continuing  
15 contempt sanctions by complying with the court’s orders. *Concha*, 2011-NMSC-031, ¶ 25  
16 (internal quotation marks and citation omitted). Criminal contempt sanctions are imposed to punish  
17 the contempt defendant for a completed act of contempt and to preserve the dignity and authority  
18 of the court. *See Concha*, 2011-NMSC-031, ¶ 26; *Greenwood*, 1957-NMSC-071, ¶ 6.

19                   Many judges in New Mexico regularly address children who are unable to properly regulate  
20 their conduct inside or outside the courtroom. Indeed, courts can anticipate that children will  
21 behave improperly at times, and they can anticipate that children will not always follow directives.  
22 The imposition of criminal contempt towards children, however, is unnecessary and is not in  
23 keeping with the purposes of the Children’s Code. Historically, New Mexico has recognized that

1 children need to be treated as children, even by courts. Since 1917, when the state established its  
2 first juvenile court, New Mexico courts have adopted special procedures governing treatment of  
3 children accused of criminal offenses. *See Peyton v. Nord*, 1968-NMSC-027, ¶ 11, 78 N.M.  
4 717, 437 P.2d 716. New Mexico’s juvenile court aligned with the national juvenile court  
5 movement, which rejected the historic common law approach towards children, under which all  
6 children over seven years of age accused of criminal offenses were treated the same as adults. *See*  
7 *In re Gault*, 387 U.S. 1, 16-17 (1967). The juvenile justice system in New Mexico presumes that  
8 while children must be held accountable for criminal acts, their conduct “is not to be measured by  
9 the same standard as that of a matured person.” *State v. Adam J.*, 2003-NMCA-080, ¶ 18, 133  
10 N.M. 815, 70 P.3d 805 (Alarid, J., specially concurring) (citations and internal quotation marks  
11 omitted).

12 Similarly, the legislature has declared that the purpose of the Children’s Code is “first to  
13 provide for the care, protection and wholesome mental and physical development of children.”  
14 NMSA 1978, § 32A-1-3(A). The Code also seeks to reduce overrepresentation of minority  
15 children in the juvenile justice system. NMSA 1978, § 32A-1-3(E). The Delinquency Act, NMSA  
16 1978, §§ 32A-2-1 to -33, for example, articulates legislative intent regarding treatment of juveniles  
17 accused of committing delinquent acts as follows:

18 A. Consistent with the protection of the public interest, *to remove from*  
19 *children committing delinquent acts the adult consequences of criminal behavior*, but to still hold  
20 children committing delinquent acts accountable for their actions to the extent of the child's age,  
21 education, mental and physical condition, background and all other relevant factors, *and to provide*  
22 *a program of supervision, care and rehabilitation*, including rehabilitative restitution by the child  
23 to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;

1           B.     To provide effective deterrents to acts of juvenile delinquency, *including an*  
2 *emphasis on community-based alternatives;*

3           ...

4           E.     To develop juvenile justice policies and procedures that are supported by  
5 data;

6           ...

7           H.     To develop *community-based alternatives to detention;*

8           I.     *To eliminate or reduce disparities based upon race or gender;*

9           NMSA 1978, § 32A-2-2 (emphasis added).

10           The Delinquency Act reflects “an evolving concern that children be treated as children so  
11 long as they can benefit from the treatment and rehabilitation provided for in the Delinquency  
12 Act.” *State v. Jones*, 2010-NMSC-012, ¶ 32, 148 N.M. 1, 229 P.3d 474. Unlike the adult criminal  
13 justice system, which places emphasis on punishment and deterrence, the juvenile justice system  
14 “favor[s] the rehabilitation and treatment of children.” *Id.* ¶ 35 (citing *State v. Jose S.*, 2007-  
15 NMCA-146, ¶ 16, 142 N.M. 829, 171 P.3d 768). The New Mexico legislature and courts have  
16 uniformly emphasized that children’s lack of maturity must be taken into account in decisions  
17 involving the justice system and children. *See, e.g., State v. Jonathan M.*, 1990-NMSC-046, ¶  
18 8, 109 N.M. 789, 791 P.2d 64. Importantly, New Mexico has chosen not to criminalize status  
19 offenses, activities that are unlawful due to a child’s age and that would not be criminal if engaged  
20 in by an adult. *See ACLU v. City of Albuquerque*, 1999-NMSC-044, ¶ 25, 128 N.M. 315, 992 P.2d  
21 866 (holding that the Children’s Code preempts city ordinance providing criminal sanctions for  
22 violations of curfew). These principles strongly suggest that children are not proper subjects of the  
23 criminal contempt power and its focus on punishment.

1 In addition, the children who appear in court, especially those in abuse and neglect, mental health,  
2 and juvenile delinquency proceedings, often have experienced adverse childhood events and  
3 trauma. See the National Child Traumatic Stress Network “NCTSN Bench Card for the Trauma-  
4 Informed Judge,” which is distributed through the National Council of Juvenile and Family Court  
5 Judges and is available at: [https://swrtc.nmsu.edu/files/2013/10/Letter-and-](https://swrtc.nmsu.edu/files/2013/10/Letter-and-judge_bench_cards_final.pdf)  
6 [judge\\_bench\\_cards\\_final.pdf](https://swrtc.nmsu.edu/files/2013/10/Letter-and-judge_bench_cards_final.pdf) (last visited August 28, 2016). The children in abuse and neglect  
7 proceedings, in particular, are parties to the proceeding because they are allegedly or have been  
8 adjudicated as abused or neglected children. *See* NMSA 1978, § 32A-4-10. The Abuse and  
9 Neglect Act requires that courts order “the department to implement and the child’s parent,  
10 guardian or custodian to cooperate with any treatment plan approved by the court.” *See* NMSA §  
11 32A-4-22(C). The Abuse and Neglect Act thus contemplates that the adults — not the children —  
12 bear the responsibility for complying with the court’s directives. Under these circumstances,  
13 holding a child in criminal contempt of court for misbehaving in the court room risks further  
14 traumatizing a child who already has been the subject of abuse or neglect.

15 By favoring the use of civil contempt powers as to children and prohibiting criminal  
16 contempt as to children, this rule balances the court’s inherent authority with the larger purposes  
17 of the Children’s Code. *Accord* NMSA 1978, § 32A-1-5(B) (“The supreme court shall adopt rules  
18 of procedure not in conflict with the children’s code governing proceedings in the children’s court,  
19 including rules and procedures for juries.”); § 32A-1-18(C) (providing that the court may “punish  
20 a person for contempt of court for disobeying an order of the court or for obstructing or interfering  
21 with the proceedings of the court or the enforcement of its orders”).

22 Judges, however, are not without tools to maintain the authority and integrity of the court.  
23 New Mexico law provides multiple alternatives to address misbehavior by children. The

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1 delinquency act provides courts with the authority and procedures to address delinquency. The  
2 mental health code provides courts with the authority and procedures to address circumstances  
3 when children require treatment. And civil contempt provides courts with the authority to compel  
4 compliance with judicial orders. Thus, despite the rule’s focus on helping the child achieve  
5 appropriate behavior, rather than on punishment, the judiciary remains well-equipped to respond  
6 to contemptuous conduct without resorting to use of the criminal contempt power.

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