

7.3 Characterization of Offense

A. No Definition by Statute or Case Law

A defendant found not guilty by reason of insanity faces a different statutory disposition if the crime charged alleges that the defendant inflicted or attempted to inflict serious physical injury or death. G.S. 15A-1321. There is, however, no statutory definition or case law outlining which crimes fall into this category. The characterization of the crime is important because more restrictions are placed on an involuntarily committed defendant who has been determined to have committed such an act. These defendants must be committed to a forensic unit of a state facility, rather than to the general population.

No statutory provision exists for commitment counsel to challenge the categorization of the respondent's alleged crime. For example, a defendant may have been charged with armed robbery but did not harm or attempt to harm the victim in any way. The criminal court judge might nevertheless commit the defendant as one who inflicted or attempted to inflict serious physical injury or death.

Counsel for the respondent could raise the issue at the commitment hearing but might be unsuccessful because the initial commitment order was entered by the criminal court judge. Counsel might seek the assistance of the respondent's defense attorney. The defense attorney might be able to make a motion in criminal court that the nature of the crime be re-categorized.

B. Crime Charged Does Not Allege Defendant Inflicted or Attempted to Inflict Serious Physical Injury or Death, and Defendant Found NGRI: Judge Must Order Commitment to State 24-Hour Facility

A defendant who is charged with a crime where it is not alleged that the defendant inflicted or attempted to inflict serious injury or death and who is found not guilty by reason of insanity must be committed by the criminal court judge to a state 24-hour facility. The court also must order the defendant into the custody of a law enforcement officer for transport directly to the facility. All subsequent proceedings are to be conducted pursuant to Chapter 122C, which governs involuntary commitment. G.S. 15A-1321(a); *see infra* Appendix A, Form AOC-SP-910M.

C. Crime Charged Does Allege Defendant Inflicted or Attempted to Inflict Serious Physical Injury or Death, and Defendant Found NGRI: Judge Must Order Commitment to DHHS Forensic Unit

A defendant who is charged with a crime where it is alleged that the defendant inflicted or attempted to inflict serious injury or death and who is found not guilty by reason of insanity must be committed by the criminal court judge to a forensic unit operated by the Department of Health and Human Services. Currently the only such unit is at Central Regional Hospital (formerly Dorothea Dix Hospital).

The court also must order the defendant into the custody of a law enforcement officer for transport directly to the forensic unit. All subsequent proceedings are to be conducted pursuant to Chapter 122C, which governs involuntary commitment. G.S. 15A-1321(b).