

3A. Order Mandating Continued Commitment of NGRI Acquittee Who Has Been Found to Be Dangerous to Self, Others, or Property as a Result of Mental Illness

This order is to be used when, following a periodic review hearing, the commitment of the acquittee is continued by the court having found that the acquittee cannot be released into the community, either with or without conditions, without posing a danger to self, others, or property pursuant to N.J.S.A. 2C:4-8(b)(3). The NGRI acquittee shall continue to be committed in the care and custody of the Commissioner of the Department of Health and confined to an appropriate institution to be treated as a person civilly committed. The order refers to the NGRI acquittee as an NGRI committee.¹

¹ Although N.J.S.A. 2C:4-8 mandates that the NGRI committee “be treated as a person civilly committed” this standard is substantially the same though not exactly the same. There are three substantial differences between the periodic review hearings of all NGRI committee and a general civil committee. The three distinctions are confirmed under Krol v. State and subsequent case law. Firstly, N.J.S.A. 2C:4-8 grants the prosecutor the right to appear and be heard at all periodic review hearings of all NGRI committees who are hospitalized or in the community under KROL court supervision on a conditional release. Second, the burden of proof for the State in sustaining a Krol commitment is “preponderance of the evidence” rather than “clear and convincing evidence” as required under a civil commitment under N.J.S.A. 30:4-27.10. Lastly, the In the Matter of the Commitment of Edward S., 118 N.J. 118 (1990) all periodic review hearings for patients who were acquitted of murder by reason of insanity shall be heard in open court unless good case is shown for an in camera hearing. See also, R. 3:19-2 and In the Matter of the Commitment of Calu, 301 N.J. Super. 20, 26-27 (App. Div. 1997).