

# DEFINING "INJURY" FOR NORTH CAROLINA ASSAULT AND OTHER OFFENSES

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Across North Carolina's various assault offenses, the governing statutes often require some level of injury as an element of the crime. These injuries include physical injury, serious injury or serious physical injury, and serious bodily injury. Some statutes specifically define these terms, while others have been interpreted by the courts on a case-by-case basis. This guide reviews and provides examples of the different types of injuries to create a better idea of specific harms in each category.



# PHYSICAL INJURY

Some assault offenses require physical injury as an element. The term “physical injury” is defined in G.S. 14-34.7(c), which applies to assault on a law enforcement or other officer. Other statutes also require physical injury as an element of the offense but do not include a specific definition. Most likely, the definition in G.S. 14-34.7 applies.

<b>STATUTE</b>	Includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury. G.S. 14-34.7(c).	
<b>APPLICABLE OFFENSES</b>		
G.S. 14-288.9	Assault on emergency personnel inflicting physical injury	Class I felony
G.S. 14-318.2	Misdemeanor child abuse	Class A1 misdemeanor
G.S. 14-32.4	Strangulation	Class H felony
G.S. 14-34.6(a)	Assault on a firefighter, EMT, medical responder, or hospital personnel inflicting physical injury	Class I felony
G.S. 14-34.7(c)	Assault on law enforcement and other officers inflicting physical injury	Class I felony

### Examples of physical injury

- The court upheld a conviction of misdemeanor child abuse inflicting physical injury where the child suffered a second-degree burn on his face, appearing that something had been placed or held against the child’s face. *State v. Church*, 99 N.C. App. 647 (1990).
- The court upheld a conviction of assault inflicting physical injury by strangulation where the victim testified that the defendant strangled her twice and there was photographic evidence depicting bruising, abrasions, and bite marks on and around her neck. *State v. Lowery*, 228 N.C. App. 229 (2013).
- The court upheld a conviction of assault on a law enforcement officer inflicting physical injury where the defendant bit the officer’s finger and broke the skin, and the officer sustained cuts on his elbow and wrist during the encounter. *State v. Cobb*, 272 N.C. App. 81 (2020).

**Notes**

Our courts have recognized that, as a general rule, a parent is not criminally liable for inflicting physical injury on a child in the course of lawfully administering corporal punishment. *State v. Varner*, 252 N.C. App. 226 (2017). However, this general rule does not apply where the parent (1) administers punishment that causes or is calculated to cause an injury that is lasting or will continue indefinitely, (2) administers punishment borne of malice or wickedness of purpose rather than a good faith or honest effort to discipline the child, or (3) uses cruel or grossly inappropriate procedures. *Id.*

# SERIOUS PHYSICAL INJURY/SERIOUS INJURY

Some assault offenses require serious physical injury or serious injury as an element. The term “serious physical injury” is defined in G.S. 14-318.4(d)(2), which applies to felony child abuse. Other statutes also require serious physical injury as an element of the offense but do not include a specific definition. Most likely, the definition in G.S. 14-318.4 applies. Our courts have defined “serious injury” as injury which is serious but falls short of causing death. *State v. Carpenter*, 155 N.C. App. 35 (2002).

<b>STATUTE</b>	Physical injury that causes great pain and suffering, including serious mental injury. G.S. 14-318.4(d)(2).	
<b>APPLICABLE OFFENSES</b>		
G.S. 14-223(b)	Resisting officer causing serious injury [effective for offenses committed on or after 12/1/21]	Class I felony
G.S. 14-318.4(a)	Felony child abuse	Class D felony
G.S. 14-32	Assault with a deadly weapon inflicting serious injury	Class E felony
G.S. 14-32.1	Assault on a person with a disability inflicting serious injury	Class F felony
G.S. 14-33(c)(1)	Assault inflicting serious injury	Class A1 misdemeanor

## Examples of serious injury

The court upheld a conviction of felony child abuse inflicting serious physical injury where there were second-degree burns on a child’s buttocks, left untreated for several days. *State v. Church*, 99 N.C. App. 647 (1990).

The court upheld a conviction of assault inflicting serious injury where the victim sustained a broken bone in the mouth, a damaged tooth, and a broken bone in the hand as a result of being struck by the defendant’s hands and fists. *State v. Carpenter*, 155 N.C. App. 35 (2002).

The court upheld a conviction of assault with a deadly weapon inflicting serious injury where the victim was treated at a hospital for multiple lacerations to his forearm, small stab wounds to his leg, a deep laceration to his thumb, bruising to his back, and a puncture wound to his right orbital rim, causing fracture of the bone. *State v. Morgan*, 164 N.C. App. 298 (2004).

The court upheld a conviction of felony child abuse inflicting serious physical injury where the child was beaten with a belt for a total time of between forty minutes and an hour and forty minutes and suffered bleeding, bruising on both arms, swelling and puffiness of the legs, black and blue buttocks, and being in pain for two weeks. *State v. Williams*, 184 N.C. App. 351 (2007).

The court upheld a conviction of assault inflicting serious injury where the victim was beaten by means of stomping and punching, had the letter “Z” carved in his back, was hospitalized, received twenty-four staples in his head, and was emotionally traumatized by the encounter. *State v. Rowe*, 231 N.C. App. 462 (2013).

## Notes

Factors our courts consider in determining if an injury is serious include pain, loss of blood, hospitalization, and time lost from work. *State v. Owens*, 65 N.C. App. 107 (1983); *State v. Romero*, 164 N.C. App. 169 (2004).

Our courts have rejected the notion that a "serious physical injury" is one requiring hospitalization or even immediate medical attention. In cases involving child abuse, there is not a requirement that a child be unable to attend school or engage in play. *State v. Williams*, 154 N.C. App. 176 (2002).

Because the nature of an injury depends on the facts of each case, whether an injury is "serious" is generally a question for the jury. *State v. Romero*, 164 N.C. App. 169 (2004); *State v. Ezell*, 159 N.C. App. 103 (2003).

# SERIOUS BODILY INJURY

Some assault offenses require serious bodily injury as an element. The term “serious bodily injury” is defined in G.S. 14-32.4, which applies to assault inflicting serious bodily injury. Other statutes also require serious bodily injury as an element of the offense, but some do not include a specific definition. Most likely, the definition in G.S. 14-32.4 applies. Our courts have indicated that the element of “serious bodily injury” requires proof of more severe injury than the element of “serious injury.” *State v. Carpenter*, 155 N.C. App. 35 (2002).

## STATUTE

Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. G.S. 14-318.4(d)(1); G.S. 14-32.4; G.S. 14-233(d).

G.S. 14-23.5 uses similar language but also includes bodily injury that causes the birth of the unborn child prior to 37-weeks’ gestation, if the child weighs 2,500 grams or less at the time of birth.

## APPLICABLE OFFENSES

G.S. 14-16.6(c)	Assault on a legislative, executive, or court officer inflicting serious bodily injury	Class F felony
G.S. 14-223(c)	Resisting officers causing serious bodily injury [effective for offenses committed on or after 12/1/21]	Class F felony
G.S. 14-23.5	Assault inflicting serious bodily injury on an unborn child	Class F felony
G.S. 14-318.4(a3)	Felony child abuse	Class B2 felony
G.S. 14-32.4(a)	Assault inflicting serious bodily injury	Class F felony
G.S. 14-34.1(c)	Discharging a firearm into occupied property	Class C felony
G.S. 14-34.6(b)	Assault on a firefighter, EMT, medical responder, or hospital personnel inflicting serious bodily injury	Class G felony
G.S. 14-34.7(a)	Assault on law enforcement and other officers inflicting serious bodily injury	Class F felony

## Examples of serious bodily injury

The court upheld a conviction of assault inflicting serious bodily injury where the victim suffered a broken jaw which was wired shut for two months, loss of thirty pounds in those two months, \$6,000 worth of damage to his teeth, broken ribs, and spasms on two occasions that made it so difficult for him to breathe that he had to visit the emergency room. *State v. Williams*, 150 N.C. App. 497 (2002).

In upholding a conviction of assault inflicting serious bodily injury, the court held that permanent loss of teeth in an assault qualifies as “permanent disfigurement.” *State v. Downs*, 179 N.C. App. 860 (2006).

The court upheld a conviction of felony child abuse inflicting serious bodily injury where a three-month-old child presented with subdural hematomas and bi-lateral retinal hemorrhaging, as a result of being severely shaken. *State v. Oakman*, 191 N.C. App. 796 (2008).

In upholding a conviction of assault inflicting serious bodily injury, the court held that a scar over the victim's eye that resulted from an assault and subsequent lingering infection amounts to permanent disfigurement. *State v. Williams*, 201 N.C. App. 161 (2009).

The court upheld a conviction of felony child abuse inflicting serious bodily injury where a three-month-old child presented with hemorrhages around the brain. *State v. Bohannon*, 247 N.C. App. 756 (2016).

The court upheld a conviction of assault on an officer inflicting serious bodily injury where an officer sustained puncture wounds on his left forearm and right bicep, severe bruising and depressions, permanent scarring (including a large circle on his right bicep, "just over a half an inch to an inch in a circle" with a "large depression" and "a deep ridge" on his left arm), and scabbing, as a result of being bitten several times by the defendant. Given that the bites caused extreme pain, skin removal, permanent scarring, and hospitalization, the court held that a reasonable juror could find this evidence sufficient to conclude the officer's injuries caused serious permanent disfigurement, or a permanent or protracted condition that caused extreme pain, or injury that resulted in prolonged hospitalization. *State v. Burwell*, 256 N.C. App. 722 (2017).

### Examples of evidence that does not constitute serious bodily injury

The court concluded that a bite-shaped discoloration on an officer's arm was not sufficient to support a finding that the defendant's bite resulted in "serious permanent disfigurement." Although the court has previously held that a scar can be considered permanent disfigurement, the court reasoned here that the officer's ability to leave the hospital and return to the police station to complete paperwork that same night demonstrated that his pain was not protracted and thus did not rise to the level of serious bodily injury. *State v. Williams*, 255 N.C. App. 168 (2017).

The court concluded that there was insufficient evidence to submit the charge of felony child abuse inflicting serious bodily injury to the jury where the child suffered a non-accidental femur fracture, which took between five to eight months to fully heal, and where the doctor testified that there should be no permanent disfigurement or any loss or impairment of function of the leg due to the surgical scars. Given that the child's surgical scars had healed by the time of trial, and she was engaged in unrestricted physical activities, the court concluded that the evidence was sufficient to submit and support a conviction of intentional child abuse resulting in serious physical injury. *State v. Dixon*, 258 N.C. App. 78 (2018).

### Notes

The Court of Appeals has held that while each case must be considered on its own facts, the presence of a minor [permanent] scar or other mild disfigurement alone cannot be sufficient to support a finding of serious bodily injury. *State v. Williams*, 255 N.C. App. 168 (2017).