

N.C.P.I.-Crim. 204A.10  
CRIMINAL STREET GANG ACTIVITY-DISCHARGING A FIREARM FROM  
WITHIN AN ENCLOSURE. FELONY.  
GENERAL CRIMINAL VOLUME  
REPLACEMENT JUNE 2018  
N.C. Gen. Stat. § 14-34.9  
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WITHIN AN ENCLOSURE. FELONY.

*NOTE WELL: Use this instruction for offenses occurring  
before December 1, 2017. For offenses occurring after  
December 1, 2017, use N.C.P.I.-Crim. 204.10A.*

The defendant has been charged with discharging a firearm from within an enclosure, as part of a pattern of criminal street gang activity.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant willfully or wantonly [discharged] [attempted to] discharge a firearm from within a(n) [building] [structure] [motor vehicle] [other conveyance (*describe conveyance*)] [erection] [enclosure] toward (a) person(s) not within that enclosure.

Second, that the defendant discharged or attempted to discharge the firearm as a part of a pattern of criminal street gang activity<sup>1</sup>. A “pattern of criminal street gang activity” is defined as engaging in and having a conviction for at least two prior incidents of criminal street gang activity that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents. To prove a pattern of criminal street gang activity in this case, the State must prove the following beyond a reasonable doubt that:

- 1) On (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the felony of (name felony), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

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- 2) And on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the felony of (name felony), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

And Third, at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity.<sup>2</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully or wantonly [discharged] [attempted to discharge] a firearm from within a(n) [building] [structure] [motor vehicle] [other conveyance (describe conveyance)] [erection] [enclosure] toward (a) person(s) not within that enclosure; that the defendant [discharged] [attempted to discharge] the firearm as a part of a pattern of criminal street gang activity; that is that:

- 1) On (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the felony of (name felony), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States];
- 2) And on (name date) the defendant, in (name court) [was convicted of] [pled guilty to] the felony of (name felony), that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States];
- 3) and at least one of these offenses occurred after December 1,

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2008, and the last of the offenses occurred within three years, excluding any periods of the defendant's imprisonment, of prior criminal street gang activity, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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<sup>1</sup> G.S. 14-50.16(c) defines criminal street gang activity as "to commit, to attempt to commit, or to solicit, coerce or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An or acts are included I accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the laws of this State: (1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act). (2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

<sup>2</sup> Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity. See G.S. 14-50.16(d).