

N.C.P.I.-Crim. 308.60
KILLING IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
(DEFENSE TO HOMICIDE).
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2022
N.C. Gen. Stat. §§ 14-51.2, 14-51.3, 14-51.4

308.60 KILLING IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—(DEFENSE TO HOMICIDE).

NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of defense of a family member or third person set out in this instruction below; (3) the jury should then be instructed on the mandate of the charged offense; and (4) the jury should be instructed on the mandate for defense of a family member or third person as set out below in the instruction. THE FAILURE TO CHARGE ON ALL OF THESE MATTERS CONSTITUTES REVERSIBLE ERROR.

NOTE WELL: Defense of a [family member] [third person] is only justified if the [family member] [third person] would have been justified in using self-defense. If this is an issue, modify accordingly.¹

NOTE WELL: If the assault occurred in defendant's home, place of residence, workplace or motor vehicle, use N.C.P.I.—Crim. 308.80, Defense of Habitation.

NOTE WELL: If the State contends that the defendant is not entitled to the use of defensive force because the defendant was attempting to commit, committing, or escaping after the commission of a felony, and that felony offense was immediately causally connected to the circumstances giving rise to the use of such defensive force, the jury should be instructed pursuant to N.C.P.I.—Crim. 308.90. If the felony offense alleged was immediately causally connected to the circumstances giving rise to the defensive forced use, the defendant would be disqualified from the benefit of using such defensive force.

If the defendant killed the victim in lawful defense of another person, the defendant's actions would be excused, and the defendant would be not guilty. The State has the burden of proving from the

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evidence beyond a reasonable doubt that the defendant did not act in the lawful defense of another person.

If you find that the defendant killed the victim and that the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the killing was necessary or apparently necessary to protect a [family member] [third person] from imminent death or great bodily harm, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, the killing would be justified by defense of a [family member] [third person]. You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time. Furthermore, the defendant has no duty to retreat in a place where the defendant has a lawful right to be.² (The defendant would have a lawful right to be in the defendant's [home]³ [own premises] [place of residence] [workplace]⁴ [motor vehicle]⁵.)

NOTE WELL: The preceding parenthetical should only be given where the place involved was the defendant's [home] [own premises] [place of residence] [workplace] [motor vehicle].

A defendant may only do in defense of a [family member] [third person] what that other person might do in that person's own defense. Further, a defendant does not have the right to use excessive force. The defendant had the right to use only such force as reasonably appeared to the defendant to be necessary under the circumstances to protect that [family member] [third person] from death or great bodily harm. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, (including) (the size, age and strength of the defendant and the [family member] [third person] as compared to the victim), (the fierceness of the assault, if any, upon the [family member] [third person], (whether the victim had a weapon in the

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victim's possession), (and) (the reputation, if any, of the victim for danger and violence). You, the jury, determine whether the defendant's belief was reasonable from the circumstances as they appeared to the defendant at the time.

(Furthermore, defense of a [family member] [third person] is justified only if the [defendant] [family member] [third person] was not the aggressor.⁶ Justification for defensive force is not present if the person who used defensive force voluntarily entered into the fight or, in other words, initially provoked the use of force. However, if the [defendant] [family member] [third person] was the aggressor, the defendant would be justified in using defensive force only if the [defendant] [family member] [third person] thereafter attempted to abandon the fight and gave notice to the opponent that the [defendant] [family member] [third person] was doing so. In other words, a person who uses defensive force is justified if the person withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that [he] [she] desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force. A person is also justified in using defensive force when the force used by the person who was provoked is so serious that the person using defensive force reasonably believes that [he] [she] was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force likely to cause death or serious bodily harm was the only way to escape the danger. If one uses abusive language toward one's opponent which, considering all of the circumstances, is calculated and intended to bring on a fight, one enters a fight voluntarily.⁷)

NOTE WELL: Instructions on aggressors and provocation should only be used if there is some evidence presented that defendant provoked the

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*confrontation. See N.C. Gen. Stat. § 14-51.4(2). If no such evidence is presented, the preceding parenthetical and reference to the aggressor throughout this instruction would not be given. In addition, the remainder of the instruction, including the mandate, would need to be edited accordingly to remove references to the aggressor. **It is reversible error to instruct the jury on the aggressor doctrine if the record lacks evidence from which the jury could infer that the defendant was an aggressor at the time the defendant allegedly acted in self-defense. State v. Hicks, 2022-NCCOA-263.***

NOTE WELL: Add the following to the final mandate:

If you are satisfied beyond a reasonable doubt that the defendant killed the victim, you may return a verdict of guilty only if the State also has satisfied you beyond a reasonable doubt that the defendant did not act in the lawful defense of a [family member] [third person]. The State must satisfy you beyond a reasonable doubt that the defendant did not reasonably believe that the killing of the victim was necessary or apparently necessary to protect [the defendant's family member] [the third person] from death or great bodily harm, or the State must satisfy you beyond a reasonable doubt that the defendant used excessive force, or was the aggressor. If you do not so find or have a reasonable doubt as to one or more of these things, then the defendant would be justified by defense of a [family member] [third person], and it would be your duty to return a verdict of not guilty.

¹. See *State v. McLawhorn*, 270 N.C. 622, 629 (1967).

². See N.C.P.I.—Crim. 308.10. “[W]herever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another.” *State v. Bass*, 371 N.C. 535, 542, 819 S.E.2d 322, 326 (2018). “[A] defendant

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entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction, which includes the relevant stand-your-ground provision.” *Id.*

³. N.C. Gen. Stat. § 14-51.2 (a) (1) states that a home is a “building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.” Curtilage is the area “immediately surrounding and associated with the home,” which may include “the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.” *State v. Grice*, 367 N.C. 753, 759 (2015) (citations and quotations omitted) (defining curtilage in a Fourth Amendment case).

⁴. N.C. Gen. Stat. § 14-51.2 (a) (4) states that a workplace is a “building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.”

⁵. N.C. Gen. Stat. § 14-51.2 (a) (3); which incorporates N.C. Gen. Stat. § 20-4.01 (23), defines “motor vehicle” as “Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C. Gen. Stat. § 20-4.01(27)d1.”

⁶. N.C. Gen. Stat. § 14-51.4(2). *See also* N.C. Gen. Stat. § 14-51.3 (b), which provides that a person who uses force as permitted by the statute is justified in using such force and is immune from civil or criminal liability, unless the person against whom force was used is a law enforcement officer or bail bondsman “who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.”

⁷. Pursuant to N.C. Gen. Stat. § 14-51.4(1), self-defense is also not available to a person who used defensive force and who was attempting to commit, committing, or escaping after the commission of a felony. If evidence is presented on this point, then the instruction should be modified accordingly pursuant to N.C.P.I.—Crim. 308.90 to add this provision at this point in the substantive instruction.

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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308.50 ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—(DEFENSE TO ALL ASSAULTS INVOLVING DEADLY FORCE).

NOTE WELL: This charge is intended for use with N.C.P.I.

Crim. 208.09, 208.10, 208.15, 208.16, 208.25, 208.50, 208.55, 208.85, and 208.60 where the evidence shows that defendant used deadly force.¹

NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of defense of a family member or third person as set out in this instruction below; (3) the jury should then be instructed on the mandate of the charged offense; and (4) the jury should be instructed on the mandate for defense of a family member or third person as set out below in this instruction. THE FAILURE TO CHARGE ON ALL OF THESE MATTERS CONSTITUTES REVERSIBLE ERROR.

NOTE WELL: Defense of a [family member] [third person] is only justified if the [family member] [third person] would have been justified in using self-defense. If this is an issue, modify accordingly.²

NOTE WELL: If the assault occurred in defendant's home, place of residence, workplace or motor vehicle, use N.C.P.I.—Crim. 308.80, Defense of Habitation.

NOTE WELL: If the State contends that the defendant is not entitled to the use of defensive force because the defendant was attempting to commit, committing, or escaping after the commission of a felony, and that felony offense was immediately causally connected to the circumstances giving rise to the use of such defensive force, the jury should be instructed pursuant to N.C.P.I.—Crim. 308.90. If the felony offense alleged was immediately causally connected to the circumstances giving rise to the defensive forced use, the defendant would be disqualified from the benefit of using such defensive force.

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If the State has satisfied you beyond a reasonable doubt that the defendant assaulted the victim (with deadly force), then you would consider whether the defendant's actions are excused and the defendant is not guilty because the defendant acted in defense of a [family member] [third person]. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant's action was not in defense of a [family member] [third person].

If the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the assault was necessary or appeared to be necessary to protect a [family member] [third person] from imminent death or great bodily harm, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, such assault would be justified by defense of a [family member] [third person].³ You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time. Furthermore, the defendant has no duty to retreat in a place where the defendant has a lawful right to be.⁴ (The defendant would have a lawful right to be in the defendant's [home]⁵ [own premises] [place of residence] [workplace]⁶ [motor vehicle]⁷.)

NOTE WELL: The preceding parenthetical should only be given where the place involved was the defendant's [home] [own premises] [place of residence] [workplace] [motor vehicle].

A defendant does not have the right to use excessive force. The defendant had the right to use only such force as reasonably appeared necessary to the defendant under the circumstances to protect a [family member] [third person] from death or great bodily harm. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, (including) (the size, age and strength of

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the defendant and the [family member] [third person] as compared to the victim), (the fierceness of the assault, if any, upon the [family member] [third person], (whether the victim had a weapon in the victim's possession), (and) (the reputation, if any, of the victim for danger and violence). You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time.

(Furthermore, defense of a [family member] [third person] is justified only if the [defendant] [family member] [third person] was not the aggressor.⁸ Justification for defensive force is not present if the person who used defensive force voluntarily entered into the fight or, in other words, initially provoked the use of force. However, if the [defendant] [family member] [third person] was the aggressor, the defendant would be justified in using defensive force only if the [defendant] [family member] [third person] thereafter attempted to abandon the fight and gave notice to the opponent that the [defendant] [family member] [third person] was doing so. In other words, a person who uses defensive force is justified if the person withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that [he] [she] desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force. A person is also justified in using defensive force when the force used by the person who was provoked is so serious that the person using defensive force reasonably believes that [he] [she] was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force likely to cause death or serious bodily harm was the only way to escape the danger. If one uses abusive language toward one's opponent which, considering all of the circumstances, is calculated and intended to bring on a fight, one enters a fight voluntarily.⁹)

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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NOTE WELL: Instructions on aggressors and provocation should only be used if there is some evidence presented that defendant provoked the confrontation. See N.C. Gen. Stat. § 14-51.4(2). If no such evidence is presented, the preceding parenthetical and reference to the aggressor throughout this instruction would not be given. In addition, the remainder of the instruction, including the mandate, would need to be edited accordingly to remove references to the aggressor. It is reversible error to instruct the jury on the aggressor doctrine if the record lacks evidence from which the jury could infer that the defendant was an aggressor at the time the defendant allegedly acted in self-defense. State v. Hicks, 2022-NCCOA-263.

NOTE WELL: If the defendant used a weapon which is a deadly weapon "per se," do not give the following paragraph, or the paragraph on page 5-6. If the weapon is not a deadly weapon per se, give the following paragraph and the paragraph on p. 5-6. State v. Clay, 297 N.C. 555, 566 (1979).

(If you find from the evidence beyond a reasonable doubt that the defendant assaulted the victim, but not with a deadly weapon or other deadly force, that the circumstances would create a reasonable belief in the mind of a person of ordinary firmness that the action was necessary or appeared to be necessary to protect that person from bodily injury or offensive physical contact, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, the assault would be justified by defense of [family member] [third person] even though the defendant was not thereby put in actual danger of death or great bodily harm. However, the force used must not have been excessive. Furthermore, defense of a [family member] [third person] is an excuse only if neither the defendant nor the [family member] [third person] was the aggressor.)

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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DEFENSE OF [FAMILY MEMBER] [THIRD PERSON] MANDATE

Therefore, I instruct you, if you are satisfied beyond a reasonable doubt that the defendant committed (name offense, including appropriate lesser included offenses),¹⁰ you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant's action was not in defense of a [family member] [third person]; that is, that the defendant did not reasonably believe that the assault was necessary or appeared to be necessary to protect a [family member] [third person] from death or serious bodily injury, or that the defendant used excessive force, or that the defendant was the aggressor.

If you do not so find or have a reasonable doubt that the State has proved any of these things, then the defendant's action would be justified by self-defense and it would be your duty to return a verdict of not guilty.

NOTE WELL: Do not give the following paragraph if the defendant used a weapon which is a deadly weapon "per se."

(Therefore, I instruct you, if you are satisfied beyond a reasonable doubt that the defendant assaulted the victim, you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant did not reasonably believe that the assault was necessary or appeared to be necessary to protect a [family member] [third person] from bodily injury or offensive physical contact, or that the defendant used excessive force, or was the aggressor. If you do not so find or have a reasonable doubt that the State has proved one or more of these things, then the defendant's action would be justified by defense of a [family member] [third person] and it would be your duty to return a verdict of not guilty.)

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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¹. Deadly force is any force likely to cause death or great bodily harm. *S. v. Clay*, 297 N.C. 555, 563 (1979).

². See *State v. McLawhorn*, 270 N.C. 622, 629 (1967).

³. This instruction is intended to cover the rule of law that action in self-defense need only be apparently, not actually, necessary. See, e.g., *State v. Jennings*, 276 N.C. 157 (1970).

⁴. See N.C.P.I.—Crim. 308.10. “[W]herever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another.” *State v. Bass*, 371 N.C. 535, 542, 819 S.E.2d 322, 326 (2018). “[A] defendant entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction, which includes the relevant stand-your-ground provision.” *Id.*

⁵. N.C. Gen. Stat. § 14-51.2 (a) (1) states that a home is a “building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.” Curtilage is the area “immediately surrounding and associated with the home,” which may include “the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.” *State v. Grice*, 367 N.C. 753, 759 (2015) (citations and quotations omitted) (defining curtilage in a Fourth Amendment case).

⁶. N.C. Gen. Stat. § 14-51.2 (a) (4) states that a workplace is a “building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.”

⁷. N.C. Gen. Stat. § 14-51.2 (a) (3); which incorporates N.C. Gen. Stat. § 20-4.01 (23), defines “motor vehicle” as “Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C. Gen. Stat. § 20-4.01(27)d1.”

⁸. N.C. Gen. Stat. § 14-51.4(2). See also N.C. Gen. Stat. § 14-51.3 (b), which provides that a person who uses force as permitted by the statute is justified in using such force and is immune from civil or criminal liability, unless the person against whom force was used is a law enforcement officer or bail bondsman “who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.”

⁹. Pursuant to N.C. Gen. Stat. § 14-51.4(1), self-defense is also not available to a person who used defensive force and who was attempting to commit, committing, or escaping after the commission of a felony. If evidence is presented on this point, then the

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instruction should be modified accordingly pursuant to N.C.P.I.—Crim. 308.90 to add this provision at this point in the substantive instruction.

¹⁰. Name all offenses which involve the use of deadly force.

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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PERSON]—(DEFENSE TO ASSAULTS NOT INVOLVING DEADLY FORCE).

NOTE WELL: Use only with N.C.P.I.—Crim. 208.40, 208.40A, 208.70, 208.70A, 208.75, and 208.60 when there is no evidence of deadly force.

*NOTE WELL: The trial judge is reminded that this instruction must be combined with the substantive offense instruction in the following manner: (1) the jury should be instructed on the elements of the charged offense; (2) the jury should then be instructed on the definition of defense of a family member or third person set out in this instruction below; (3) the jury should then be instructed on the mandate of the charged offense; and (4) the jury should be instructed on the mandate for defense of a family member or third person as set out below in this instruction. **THE FAILURE TO CHARGE ON ALL OF THESE MATTERS CONSTITUTES REVERSIBLE ERROR.***

NOTE WELL: Defense of a [family member] [third person] is only justified if the [family member] [third person] would have been justified in using self-defense. If this is an issue, modify accordingly.¹

NOTE WELL: If the assault occurred in defendant's home, place of residence, workplace or motor vehicle, use N.C.P.I.—Crim. 308.80, Defense of Habitation.

NOTE WELL: If the State contends that the defendant is not entitled to the use of defensive force because the defendant was attempting to commit, committing, or escaping after the commission of a felony, and that felony offense was immediately causally connected to the circumstances giving rise to the use of such defensive force, the jury should be instructed pursuant to N.C.P.I.—Crim. 308.90. If the felony offense alleged was immediately causally connected to the circumstances giving rise to the defensive forced use, the defendant would be disqualified from the benefit of using such defensive force.

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If the defendant assaulted the victim in lawful defense of another person, the defendant's actions would be excused, and the defendant would be not guilty. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant did not act in the lawful defense of another person.

If from the evidence you find beyond a reasonable doubt that the defendant assaulted the victim and that the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the assault was necessary or apparently necessary to protect a [family member] [third person] from bodily injury or offensive physical contact, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, such assault would be justified by defense of a [family member] [third person]. You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time. Furthermore, the defendant has no duty to retreat in a place where the defendant has a lawful right to be.² (The defendant would have a lawful right to be in the defendant's [home]³ [own premises] [place of residence] [workplace]⁴ [motor vehicle]⁵ .)

NOTE WELL: The preceding parenthetical should only be given where the place involved was the defendant's [home] [own premises] [place of residence] [workplace] [motor vehicle].

A defendant may only do in defense of a [family member] [third person] what that other person might do in that person's own defense. Further, a defendant does not have the right to use excessive force. This means that the defendant had the right to use only such force as reasonably appeared to the defendant to be necessary under the circumstances to protect that [family member] [third person] from bodily

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ASSAULT IN LAWFUL DEFENSE OF A [FAMILY MEMBER] [THIRD PERSON]—
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injury or offensive physical contact. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, (including) (the size, age and strength of the defendant and the [family member] [third person] as compared to the victim), (the fierceness of the assault, if any, upon the [family member] [third person], (whether the victim had a weapon in the victim's possession), (and) (the reputation, if any, of the victim for danger and violence). Again, it is for you, the jury, to determine whether the defendant's belief was reasonable from the circumstances as they appeared to the defendant at the time.

(Furthermore, defense of a [family member] [third person] is justified only if the [defendant] [family member] [third person] was not the aggressor.⁶ Justification for defensive force is not present if a person voluntarily enters into the fight or, in other words, initially provokes the use of force against [himself] [herself]. If one uses abusive language toward one's opponent which, considering all of the circumstances, is calculated and intended to bring on a fight, one enters a fight voluntarily. However, if the [defendant] [family member] [third person] was the aggressor, the defendant is justified in using defensive force only if the [defendant] [family member] [third person] thereafter attempted to abandon the fight and gave notice to the opponent that the [defendant] [family member] [third person] was doing so. In other words, a person who uses defensive force is justified if the person withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that [he] [she] desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force.⁷)

NOTE WELL: Instructions on aggressors and provocation should only be used if there is some

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*evidence presented that defendant provoked the confrontation. See N.C. Gen. Stat. § 14-51.4(2). If no such evidence is presented, the preceding parenthetical and reference to the aggressor throughout this instruction would not be given. In addition, the remainder of the instruction, including the mandate, would need to be edited accordingly to remove references to the aggressor. **It is reversible error to instruct the jury on the aggressor doctrine if the record lacks evidence from which the jury could infer that the defendant was an aggressor at the time the defendant allegedly acted in self-defense. State v. Hicks, 2022-NCCOA-263.***

NOTE WELL: Add the following to the final mandate:

Although you are satisfied beyond a reasonable doubt that the defendant assaulted the victim, you may return a verdict of guilty only if the State has satisfied to you beyond a reasonable doubt that the defendant did not act in the lawful defense of a [family member] [third person]; that is, that the defendant did not reasonably believe that the assault of the victim was necessary or apparently necessary to protect [the defendant's family member] [the third person] from bodily injury or offensive physical contact, or that the defendant used excessive force, or was the aggressor. If you do not so find or have a reasonable doubt that the State has proved one or more of these things, then the defendant would be justified by defense of a [family member] [third person]; therefore, your duty would be to return a verdict of not guilty.

¹. See *State v. McLawhorn*, 270 N.C. 622, 629 (1967).

². See N.C.P.I.—Crim. 308.10. “[W]herever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another.” *State v. Bass*, 371 N.C. 535, 542, 819 S.E.2d 322, 326 (2018). “[A] defendant

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entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction, which includes the relevant stand-your-ground provision.” *Id.*

³. N.C. Gen. Stat. § 14-51.2 (a) (1) states that a home is a “building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.” Curtilage is the area “immediately surrounding and associated with the home,” which may include “the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.” *State v. Grice*, 367 N.C. 753, 759 (2015) (citations and quotations omitted) (defining curtilage in a Fourth Amendment case).

⁴. N.C. Gen. Stat. § 14-51.2 (a) (4) states that a workplace is a “building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.”

⁵. N.C. Gen. Stat. § 14-51.2 (a) (3); which incorporates N.C. Gen. Stat. § 20-4.01 (23), defines “motor vehicle” as “Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C. Gen. Stat. § 20-4.01(27)d1.”

⁶. N.C. Gen. Stat. § 14-51.4(2). *See also* N.C. Gen. Stat. § 14-51.3 (b), which provides that a person who uses force as permitted by the statute is justified in using such force and is immune from civil or criminal liability, unless the person against whom force was used is a law enforcement officer or bail bondsman “who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.”

⁷. Pursuant to N.C. Gen. Stat. § 14-51.4(1), self-defense is also not available to a person who used defensive force and who was attempting to commit, committing, or escaping after the commission of a felony. If evidence is presented on this point, then the instruction should be modified accordingly pursuant to N.C.P.I.—Crim. 308.90 to add this provision at this point in the substantive instruction.

N.C.P.I.-Crim. 308.45A
SELF-DEFENSE EXAMPLE WITH 208.10—ALL ASSAULTS INVOLVING DEADLY
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308.45A SELF-DEFENSE EXAMPLE WITH 208.10—ALL ASSAULTS
INVOLVING DEADLY FORCE.

*NOTE WELL: This charge is intended for use with
N.C.P.I.*

*Crim. 208.09, 208.10, 208.15, 208.16, 208.25, 208.50,
208.55, 208.85, and 208.60 where the evidence shows
that the defendant used deadly force.¹*

*NOTE WELL: This example instruction combines the
assault instruction with the self-defense instruction in
the following manner: (1) the jury should be instructed
on the elements of the charged offense; (2) the jury
should then be instructed on the definition of self-
defense set out in this instruction below; (3) the jury
should then be instructed on the mandate of the
charged offense; and (4) the jury should be instructed
on the mandate for self-defense as set out below in
this instruction. THE FAILURE TO CHARGE ON ALL OF
THESE MATTERS CONSTITUTES REVERSIBLE ERROR.*

*NOTE WELL: If the assault occurred in defendant's
home, place of residence, workplace or motor vehicle,
use N.C.P.I.—Crim. 308.80, Defense of Habitation.*

*NOTE WELL: If the State contends that the defendant
is not entitled to the use of defensive force because
the defendant was attempting to commit, committing,
or escaping after the commission of a felony, and that
felony offense was immediately causally connected to
the circumstances giving rise to the use of such
defensive force, the jury should be instructed pursuant
to N.C.P.I.—Crim. 308.90. If the felony offense alleged
was immediately causally connected to the
circumstances giving rise to the defensive forced use,
the defendant would be disqualified from the benefit of
using such defensive force.*

The defendant has been charged with assault with a deadly weapon
with intent to kill inflicting serious injury.

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

First, that the defendant assaulted the victim by intentionally² (and without justification or excuse)³ (*describe assault*).

Second, that the defendant used a deadly weapon. A deadly weapon is a weapon which is likely to cause death or serious bodily injury. [(*Name object*) is a deadly weapon]. [In determining whether (*name object*) was a deadly weapon, you should consider the nature of (*name object*), the manner in which it was used, and the size and strength of the defendant as compared to the victim.]⁴

Third, the State must prove that the defendant had the specific intent to kill the victim.

And Fourth, that the defendant inflicted serious injury.⁵

If the State has satisfied you beyond a reasonable doubt that the defendant assaulted the victim with a deadly weapon with intent to cause death or serious bodily injury, then you would consider whether the defendant's actions are excused and the defendant is not guilty because the defendant acted in self-defense. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant's action was not in self-defense.

If the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the assault was necessary or appeared to be necessary to protect that person from imminent death or great bodily harm, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, such assault would be justified by self-defense.⁶ You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time. Furthermore, the defendant has no duty to retreat in a place where the defendant has a lawful right to be.⁷ (The defendant would have

a lawful right to be in the defendant's [home]⁸ [own premises] [place of residence] [workplace]⁹ [motor vehicle]¹⁰.)

NOTE WELL: The preceding parenthetical should only be given where the place involved was the defendant's [home] [own premises] [place of residence] [workplace] [motor vehicle].

A defendant does not have the right to use excessive force. The defendant had the right to use only such force as reasonably appeared necessary to the defendant under the circumstances to protect the defendant from death or great bodily harm. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, (including the size, age and strength of the defendant as compared to the victim), (the fierceness of the assault, if any, upon the defendant), (whether the victim possessed a weapon), (and the reputation, if any, of the victim for danger and violence) (*describe other circumstances as appropriate from the evidence*). Again, you, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at the time.

(Furthermore, self-defense is justified only if the defendant was not the aggressor.¹¹ Justification for defensive force is not present if the person who used defensive force voluntarily entered into the fight or, in other words, initially provoked the use of force against [himself] [herself]. If one uses abusive language toward one's opponent which, considering all of the circumstances, is calculated and intended to bring on a fight, one enters a fight voluntarily. However, if the defendant was the aggressor, the defendant is justified in using defensive force if the defendant thereafter attempted to abandon the fight and gave notice to the defendant's opponent that the defendant was doing so. In other words, a person who uses defensive force is justified if the person

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withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that [he] [she] desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force. A person is also justified in using defensive force when the force used by the person who was provoked is so serious that the person using defensive force reasonably believes that [he] [she] was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force likely to cause death or serious bodily harm was the only way to escape the danger.¹²⁾

NOTE WELL: Instructions on aggressors and provocation should only be used if there is some evidence presented that defendant provoked the confrontation. See N.C. Gen. Stat. § 14-51.4(2). If no such evidence is presented, the preceding parenthetical and reference to the aggressor throughout this instruction would not be given. In addition, the remainder of the instruction, including the mandate, would need to be edited accordingly to remove references to the aggressor. It is reversible error to instruct the jury on the aggressor doctrine if the record lacks evidence from which the jury could infer that the defendant was an aggressor at the time the defendant allegedly acted in self-defense. State v. Hicks, 2022-NCCOA-263.

NOTE WELL: If the defendant used a weapon which is a deadly weapon "per se," do not give the following paragraph, or the paragraph on page 6-7. If the weapon is not a deadly weapon per se, give the following paragraph and the paragraph on p. 6-7. State v. Clay, 297 N.C. 555, 566 (1979).

(If you find from the evidence beyond a reasonable doubt that the defendant assaulted the victim, but not with a deadly weapon or other deadly force, that the circumstances would create a reasonable belief in the mind of a person of ordinary firmness that the action was necessary

or appeared to be necessary to protect that person from bodily injury or offensive physical contact, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, the assault would be justified by self-defense- even though the defendant was not thereby put in actual danger of death or great bodily harm; however, the force used must not have been excessive. Furthermore, self-defense is an excuse only if the defendant was not the aggressor.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally (*describe assault*) the victim with a (*name object*) (and that (*name weapon*) was a deadly weapon)¹³ and that the defendant intended to kill the victim and did seriously injure *him*, 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.¹⁴

*NOTE WELL: The following self-defense mandate must be given after the mandate on each substantive offense instructed upon. **INCLUDING THE SELF-DEFENSE MANDATE IS REQUIRED BY STATE V. WOODSON, 31 N.C. APP. 400 (1976).** Cf. State v. Dooley, 285 N.C. 158 (1974).*

SELF-DEFENSE MANDATE

Therefore I instruct you, if you are satisfied beyond a reasonable doubt that the defendant committed (*name offense, including appropriate lesser included offenses*),¹⁵ you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant's action was not in self-defense; that is, that the defendant did not reasonably believe that the assault was necessary or appeared to be necessary to protect the defendant from death or serious bodily injury, or that the defendant used excessive force, or that the defendant was the aggressor.

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If you do not so find or have a reasonable doubt that the State has proved any one or more of these things, then the defendant's action would be justified by self-defense and, it would be your duty to return a verdict of not guilty.

NOTE WELL: Do not give the following paragraph if the defendant used a weapon which is a deadly weapon "per se."

(Therefore I instruct you, if you are satisfied beyond a reasonable doubt that the defendant committed (*name offense, including appropriate lesser included offenses*)¹⁶ you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant did not reasonably believe that the assault was necessary or appeared to be necessary to protect the defendant from bodily injury or offensive physical contact, or that the defendant used excessive force, or was the aggressor. If you do not so find or have a reasonable doubt that the State has proved one or more of these things, then the defendant's action would be justified by self-defense and, it would be your duty to return a verdict of not guilty.)

¹. Deadly force is any force likely to cause death or great bodily harm. *S. v. Clay*, 297 N.C. 555, 563 (1979).

². If a definition of intent is required, see N.C.P.I.—Crim. 120.10.

³. The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

⁴. Use appropriate bracketed statement. In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, *e.g.*, a real pistol and a toy pistol, state what would not be a deadly weapon.

⁵. Serious injury may be defined as "such physical injury as causes great pain and suffering." See *S. v. Jones*, 258 N.C. 89 (1962), or *S. v. Ferguson*, 261, N.C. 558 (1964). If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows: "(Describe injury) would be a serious injury." *S. v. Davis*, 33 N.C. App. 262 (1977).

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⁶. This instruction is intended to cover the rule of law that action in self-defense need only be apparently, not actually, necessary. *See, e.g., State v. Jennings*, 276 N.C. 157 (1970).

⁷. *See* N.C.P.I.—Crim. 308.10. “[W]herever an individual is lawfully located—whether it is his home, motor vehicle, workplace, or any other place where he has the lawful right to be—the individual may stand his ground and defend himself from attack when he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself or another.” *State v. Bass*, 371 N.C. 535, 542 819 S.E.2d 322, 326 (2018). “[A] defendant entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction, which includes the relevant stand-your-ground provision.” *Id.*

⁸. N.C. Gen. Stat. § 14-51.2 (a) (1) states that a home is a “building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.” Curtilage is the area “immediately surrounding and associated with the home,” which may include “the yard around the dwelling house as well as the area occupied by barns, cribs, and other outbuildings.” *State v. Grice*, 367 N.C. 753, 759 (2015) (citations and quotations omitted) (defining curtilage in a Fourth Amendment case).

⁹. N.C. Gen. Stat. § 14-51.2 (a) (4) states that a workplace is a “building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.”

¹⁰. N.C. Gen. Stat. § 14-51.2 (a) (3); which incorporates N.C. Gen. Stat. § 20-4.01 (23), defines “motor vehicle” as “Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in N.C. Gen. Stat. § 20-4.01(27)d1.”

¹¹. N.C. Gen. Stat. § 14-51.4(2). *See also* N.C. Gen. Stat. § 14-51.3 (b), which provides that a person who uses force as permitted by the statute is justified in using such force and is immune from civil or criminal liability, unless the person against whom force was used is a law enforcement officer or bail bondsman “who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.”

¹². Pursuant to N.C. Gen. Stat. § 14-51.4(1), self-defense is also not available to a person who used defensive force and who was attempting to commit, committing, or escaping after the commission of a felony. If evidence is presented on this point, then the instruction should be modified accordingly pursuant to N.C.P.I.—Crim. 308.90 to add this provision at this point in the substantive instruction.

¹³. This parenthetical phrase should be used only where the weapon is not deadly *per se*.

¹⁴. If there is to be instruction on lesser included offenses, the last phrase should be: “...you will not return a verdict of guilty of assault with a deadly weapon with intent to kill inflicting serious injury.” *See State v. Hannah*, 149 N.C. App. 713, 563 S.E.2d 1 (2002) (holding that assault inflicting serious bodily injury pursuant to N.C. Gen. Stat. § 14-32.4 is

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not a lesser-included offense of assault with a deadly weapon with intent to kill inflicting serious injury).

¹⁵. Name all offenses which involve the use of deadly force.

¹⁶. Name only those lesser included offenses which do not involve the use of a deadly weapon force, *e.g.*, those covered in N.C.P.I.—208.40, 208.60, 208.70, and 208.75.