

310.10 COMPULSION, DURESS<sup>1</sup>, OR COERCION.

*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 compulsion, duress, or coercion set out in this instruction below; (3) the jury should be instructed on the mandate for compulsion, duress, or coercion as set out below in this instruction; and (4) the jury should then be instructed on the mandate of the charged offense. **The failure to charge on all of these matters constitutes reversible error.***

There is evidence in this case tending to show that the defendant acted only because of [compulsion] [duress] [coercion]. The burden of proving [compulsion] [duress] [coercion] is on the defendant<sup>2</sup>. It need not be proved beyond a reasonable doubt, but only to your satisfaction.

**COMPULSION**

[Compulsion is the act of compelling; the quality, state, or condition of being compelled.<sup>3</sup>]

**DURESS**

[Duress is where the unlawful act of another induces the defendant to perform some act under circumstances which deprive defendant of the exercise of free will.<sup>4</sup>]

The defendant would not be guilty of [name crime] because of duress if the defendant proves to your satisfaction the following two things:

First, the defendant's reasonable fear that the defendant would suffer immediate death or serious bodily injury if the defendant did not so act.

And Second, the defendant did not have a reasonable opportunity to avoid doing the act without undue exposure to death or serious bodily harm.]<sup>5</sup>

### **COERCION**<sup>6</sup>

[Coercion is compulsion of a free agent by physical, moral, or economic force or threat of physical force.<sup>7</sup>]

The defendant's assertion of [compulsion] [duress] [coercion] is a denial that the defendant committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.<sup>8</sup>

If the defendant has proven to your satisfaction that the defendant (describe action of the defendant) at the time of the alleged offense because of [compulsion] [duress] [coercion] you will not consider this case further and it would be your duty to return a verdict of not guilty.

However, if you do not so find then you must decide if the defendant is guilty of (name offense). If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant (give final mandate for offense charged).

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<sup>1</sup>. The defense of duress is not available to a defendant charged with murder.

<sup>2</sup>. *State v. Strickland*, 307 N.C. at 297 (1983).

<sup>3</sup>. Compulsion, *Black's Law Dictionary* (10th Ed. 2014).

<sup>4</sup>. *Stegall v. Stegall*, 100 N.C. App. 398, 401, 397 S.E.2d 306, 307 (1990).

<sup>5</sup>. *State v. Smarr*, 146 N.C. App. 44, 54-55, 551 S.E.2d 881, 888 (2001).

<sup>6</sup>. The distinction between duress and coercion has blurred. See *State v. Smarr*, 146 N.C. App. 44, 54 n.1, 551 S.E.2d 881, 887 n.1 (2001) ("North Carolina case law uses the terms duress and coercion interchangeably").

<sup>7</sup>. Coercion, *Black's Law Dictionary* (10th Ed. 2014).

<sup>8</sup>. *State v. Sherian*, 234 N.C. 30 (1951).

N.C.P.I.-Crim. 308.90  
JUSTIFICATION FOR DEFENSIVE FORCE NOT AVAILABLE—DEFENDANT  
ATTEMPTING TO COMMIT, COMMITTING, OR ESCAPING AFTER THE  
COMMISSION OF A FELONY.  
GENERAL CRIMINAL VOLUME  
JUNE 2022  
N.C. Gen. Stat. § 14-51.4(1)  
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308.90 JUSTIFICATION FOR DEFENSIVE FORCE NOT AVAILABLE—  
DEFENDANT ATTEMPTING TO COMMIT, COMMITTING, OR ESCAPING AFTER  
THE COMMISSION OF A FELONY.

*NOTE WELL: Instructing the jury on the following causal nexus requirement should only be used if there is some evidence presented that the defendant acted in self-defense while attempting to commit, committing, or escaping after the commission of a felony. See N.C.G.S. § 14-51.4(1). See also State v. McLymore, 2022-NCSC-12. If no such evidence is presented, this instruction would not be given. In addition, the remainder of the substantive instruction, including the mandate, would need to be edited accordingly.*

The defendant would not be justified, and is therefore not entitled to the benefit of using defensive force, if [he] [she] was [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*), and that felony offense was immediately causally connected to the circumstances giving rise to the defensive force used.<sup>1</sup> As such, for the defendant to be disqualified from the benefit of using defensive force, the State must prove beyond a reasonable doubt, among other things, that the defendant, while acting in self-defense, was [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*), and there was an immediate causal connection between the defendant's use of such defensive force and [his] [her] felonious conduct. In other words, the State must prove that but for the defendant [attempting to commit] [committing] [escaping after the commission of] the felony of (*name felony offense alleged*),<sup>2</sup> the confrontation resulting in [injury to] [the death of] the victim would not have occurred.<sup>3</sup>

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<sup>1</sup>. The Supreme Court of North Carolina has held that N.C.G.S. § 14-51.4(1) requires the State to prove “the existence of an immediate causal nexus between the defendant’s disqualifying conduct and the confrontation during which the defendant used force,” overruling *State v. Crump*, 259 N.C. App. 144 (2018) and subsequent decisions relying on *Crump’s* holding. *State v. McLymore*, 2022-NCSC-12, ¶ 30. The trial judge is reminded that this instruction must be inserted within the applicable substantive instruction when the evidence presented supports the use of this additional language. *Id.* at ¶ 35.

<sup>2</sup>. The Supreme Court of North Carolina has recognized the affirmative defense of justification may be available “in narrow and extraordinary circumstances” to the charge of possession of a firearm by a convicted felon pursuant to N.C.G.S. § 14-415.1. *State v. Mercer*, 373 N.C. 459, 463, 838 S.E.2d 359, 363 (2020). The Court has also noted that failing to properly instruct the jury on the causal nexus requirement of N.C.G.S. § 14-51.4 denies a defendant the opportunity to assert such an affirmative defense to dispute the existence of a causal nexus between their violation of N.C.G.S. § 14-415.1 and the use of force. *See State v. McLymore*, 2022-NCSC-12, ¶ 2 (stating that the Court “does not interpret N.C.G.S. § 14-51.4(1) to categorically prohibit individuals with a prior felony conviction from ever using a firearm in self-defense[.]”). *See also* N.C.P.I.—Crim. 310.14 (Justification).

<sup>3</sup>. *See State v. McLymore*, 2022-NCSC-12, ¶ 30.