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204A.10A CRIMINAL GANG ACTIVITY<sup>1</sup>—DISCHARGING A FIREARM FROM WITHIN AN ENCLOSURE. FELONY.

*NOTE WELL: Use this instruction for offenses occurring on or after December 1, 2017. For offenses occurring after December 1, 2017, use N.C.P.I.—Crim. 204A.10.*

The defendant has been charged with discharging a firearm from within an enclosure as part of criminal 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 a firearm toward (a) person(s) not within that enclosure.

And Third, that the defendant [discharged] [attempted to discharge] the firearm as a part of criminal gang activity. Criminal gang activity is defined as the commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (name offense and describe the elements of the offense) and either of the following conditions is met: the offense is committed with the intent to benefit, promote, or further the interests of a criminal gang for the purpose of increasing a person's own standing or position within a criminal gang or the participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.

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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 and that the defendant [discharged] [attempted to discharge] the firearm as a part of criminal 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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1 For a definition of “criminal gang activity,” see N.C. Gen. Stat. § 14-50.16A(2). For offenses that qualify as criminal gang activity, see Article 5 of Chapter 90 of the General Statutes or Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 and G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, 14-248, or 14-313.