

MAKING A VIOLENT ATTACK WITH A DEADLY WEAPON UPON THE [RESIDENCE] [OFFICE] [TEMPORARY ACCOMMODATION] [MEANS OF TRANSPORT] OF A(N) [LEGISLATIVE] [EXECUTIVE] [COURT] OFFICER. G.S. 14-16.6(a), (b). FELONY.

The defendant has been charged with making a violent attack with a deadly weapon upon the [residence] [office] [temporary accommodation] [means of transport] of a(n) [legislative] [executive] [court] officer.

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

First, that the defendant intentionally<sup>1</sup> (and without justification or excuse)<sup>2</sup> made a violent attack upon the [residence] [office] [temporary accommodation] [means of transport] of the victim. A violent attack is the use of extreme force with the intent to inflict harm or destruction.

Second, that the victim was a(n) [legislative]<sup>3</sup> [executive]<sup>4</sup> [court]<sup>5</sup> officer. [(Name victim's title) is a [legislative]

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<sup>1</sup>If a definition of intent is needed, see N.C.P.I.--Crim. 120.10.

<sup>2</sup>The parenthetical phrase should only be used where there is evidence of justification or excuse.

<sup>3</sup>G.S. 147-2 The legislative officers are: the fifty Senators; One hundred and twenty members of the House of Representatives; a Speaker of the House of Representatives; a clerk and assistants in each house; a Sergeant-at-arms and assistants in each house; and as many subordinates in each house as may be deemed necessary.

<sup>4</sup>G.S. 147-3(c) The general civil executive officers of this State are as follows: a Governor; a Lieutenant Governor; Private secretary for the Governor; a Secretary of State; an Auditor; a Treasurer; an Attorney General; a Superintendent of Public Instruction; the members of the Governor's Council; a Commissioner of Agriculture; a Commissioner of Labor; a Commissioner of Insurance.

<sup>5</sup>G.S. 14-16.10(1) defines a court officer as Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in G.S. 7B-1501(5). Effective December 1, 2003, the term "court officer" includes any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

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[executive] [court] officer.].<sup>6</sup>

Third, that the defendant used a deadly weapon. A deadly weapon is a weapon likely to cause death or serious bodily injury.

[(Name weapon) is a deadly weapon.] [In determining whether (name weapon) is a deadly weapon, you should consider the nature of (name weapon) and the manner in which it was used (and the size and strength of the defendant as compared to the victim).]<sup>7</sup>

Fourth, that defendant knew or had reasonable grounds to know that (name residence, office, temporary accommodation, or means of transport) was the [residence] [office] [temporary accommodation] [means of transport] of a(n) [legislative] [executive] [court] officer.

And Fifth, that such violent attack was made in a manner likely to endanger the victim.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally made a violent attack on (name residence, office, temporary accommodation, or means of transport), with a (name weapon) (and that (name weapon) was a deadly weapon),<sup>8</sup> that (name residence, office, temporary accommodation, or means of transport) was the

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<sup>6</sup>G.S. 14-16.9 provides that any person who has been elected to any of the above-mentioned offices, but has not yet taken the oath of office shall be considered to hold the office for the purpose of this offense.

<sup>7</sup>Use applicable 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.

<sup>8</sup>The parenthetical phrase should only be given where the weapon is not deadly per se.

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[residence] [office] [temporary accommodation] [means of transport] of (name victim), that (name victim) was a(n) [legislative] [executive] [court] officer, that the defendant knew or had reasonable grounds to know that (name residence, office, temporary accommodation, or means of transport) was the [residence] [office] [temporary accommodation] [means of transport] of a(n) [legislative] [executive] [court] officer, and that the attack was made in a manner likely to endanger the victim, (nothing else appearing)<sup>9</sup> 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.<sup>10</sup>

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<sup>9</sup>The parenthetical phrase should only be used where there is evidence of justification or excuse.

<sup>10</sup>If there is to be an instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of making a violent attack with a deadly weapon upon the [residence] [office] [temporary accommodation] [means of transport] of a(n) [legislative] [executive] [court] officer." Making a violent attack on the residence/office of a legislative/executive officer (see N.C.P.I.--208.01A) is a lesser included offense.

