

208.90 DISCHARGING A FIREARM INTO OCCUPIED PROPERTY. FELONY.

*NOTE WELL: For offenses involving discharge of a barreled weapon which is not a firearm, use N.C.P.I.—Crim. 208.90A.*

The defendant has been charged with discharging a firearm into occupied property.<sup>1</sup>

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 a firearm into a(n) [building] [structure] [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] [device] [equipment] [erection] [enclosure]<sup>2</sup> (without justification or excuse).<sup>3</sup> An act is willful or wanton when it is done intentionally with knowledge or a reasonable ground to believe that the act would endanger the rights or safety or others.

Second, that the [building] [structure] [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] [device] [equipment] [erection] [enclosure] was occupied by one or more persons at the time that the firearm was discharged.

And Third, that the defendant knew that the [building] [structure] [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] [device] [equipment] [erection] [enclosure] was occupied by one or more persons, (or that the defendant had reasonable grounds to believe that the [building] [structure] [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] [device] [equipment] [erection] [enclosure] was occupied by one or more persons).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully or wantonly discharged a

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firearm into the [building] [structure] [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] [device] [equipment] [erection] [enclosure] (without justification or excuse),<sup>4</sup> while it was occupied by one or more persons, and that defendant knew it was occupied by one or more persons (or had reasonable grounds to believe that it was occupied by one or more persons), 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 purposes of this statute, property is described as any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure.

2. N.C. Gen. Stat. § 14-34.1 forbids attempting to discharge a firearm into occupied property as well as the actual discharge.

If only an "attempt" is charged and the judge believes that it is a type covered by the statute, the instruction may be modified accordingly. If an instruction explaining "attempt" is required, see N.C.P.I.—Crim. 201.10.

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

4. The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense. Where there is evidence sufficient to instruct on self-defense, provide the self-defense instruction and include a mandate that self-defense applies to each charge. See *State v. McKoy*, 834 S.E.2d 192 (2019) (holding that the trial court erred in failing to give a self-defense instruction in its final mandate on the charge of discharging a firearm into occupied property).