**T.P.I. CRIM. 39.05(b)**

**CRIMINAL GANG OFFENSE**

**SUPPLEMENTAL INSTRUCTION (CRIMINAL GANG INITIATION)**

**(Only for offenses committed on or after 4/28/16)**

Members of the jury, you have found the defendant, *[ \_\_\_\_\_\_\_\_\_\_\_\_ ]*, guilty of the offense of *[ \_\_\_\_\_\_\_\_\_\_\_\_\_\_ ]*. It is now your duty to determine certain facts which may affect the sentence the defendant will receive for this offense. In making these determinations, you will take with you the indictment and the Court's previous written instructions. You should follow such previous instructions as to the law of consideration of evidence, deliberations, reasonable doubt, witnesses and any other relevant matters. Each verdict you reach must be unanimous.

You will first determine if the defendant, at the time of committing that offense, committed a “criminal gang offense.”

“Criminal gang offense” means the *[commission of]* *[attempted commission of] [facilitation of]* *[solicitation of]* *[conspiracy to commit]* any *[ here name an offense listed in TCA § 40-35-121(a)(3)(B) ]*.

You are to take with you the court’s previous instructions along with this supplemental instruction, the indictment and all exhibits entered into evidence and complete the verdict form or forms as directed below. Your verdict must be unanimous as to all findings on the verdict forms.

**VERDICT FORM “A”**

Was the offense of *[ ]* a “criminal gang offense”?

Count \_

Yes \_

No \_

Count \_\_\_

Yes \_\_\_

No \_\_\_

Count \_\_\_

Yes \_

No \_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOREPERSON

If your verdict is “No,” you will go no further and you will report your verdict. However, if your verdict is “Yes,” you will proceed to determine whether or not the defendant committed the offense for the purpose of and with the intent to fulfill an initiation or other requirement for joining a “criminal gang.”

A “criminal gang” is a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(A) As one (1) of its activities the commission of criminal gang offenses;

and

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.

“Pattern of criminal gang activity” means prior convictions for the commission or attempted commission of, facilitation of, solicitation of, or conspiracy to commit:

(i) two (2) or more criminal gang offenses that are classified as felonies;

or

(ii) three (3) or more criminal gang offenses that are classified as misdemeanors;

or

(iii) one (1) or more criminal gang offenses that are classified as felonies and two (2) or more criminal gang offenses that are classified as misdemeanors;

and

(iv) the criminal gang offenses are committed on “separate occasions;”

and

(v) the criminal gang offenses are committed within a five-year period.

“Prior conviction” means a criminal gang offense for which a criminal gang member was convicted prior to the commission of the instant criminal gang offense by the defendant. “Prior conviction” includes convictions under the laws of any other state, government or country that, if committed in this state, would have constituted a criminal gang offense*. [ [ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] is a criminal gang offense.]* Convictions for multiple criminal gang offenses committed as part of a single course of conduct within twenty-four (24) hours are not committed on “separate occasions.” [However, acts that constitute criminal gang offenses committed prior to 7/1/13 during the perpetration of which the defendant knowingly caused, or threatened to cause, death or bodily injury to another person or persons, specifically including rape of a child, aggravated rape or rape; or resulted, or was intended to result, in the defendant's receiving income, benefit, property, money or anything of value from the commission of any aggravated burglary, or from the illegal sale, delivery, or manufacture of a controlled substance, controlled substance analogue, or firearm, shall not be construed to be a single course of conduct.]

**VERDICT FORM “B”**

Do you unanimously find that the defendant committed the offense for the purpose of and with the intent to fulfill an initiation or other requirement for joining a “criminal gang”?

Yes \_\_

No \_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOREPERSON

If your verdict is “No,” you will go no further and you will report your verdict. However, if your verdict is “Yes,” you will proceed to determine whether or not the “criminal gang offense” was committed *[at the direction of] [in association with] [for the benefit of] [the defendant’s criminal gang] [a member of the defendant’s criminal gang]*.

**VERDICT FORM “C”**

Does the jury find the “criminal gang offense” was committed *[at the direction of] [in association with] [for the benefit of] [the defendant’s criminal gang] [a member of the defendant’s criminal gang]* beyond a reasonable doubt?

Yes \_\_\_\_

No \_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FOREPERSON