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

**CRIMINAL GANG OFFENSE**

**SUPPLEMENTAL INSTRUCTION** **(CRIMINAL GANG MEMBER)**

**(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” meansthe *[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 was a “criminal gang member.”

A “criminal gang member” is a person who is a member of a criminal gang, who meets two (2) or more of the following criteria:

(A) Admits to criminal gang involvement;

(B) Is identified as a criminal gang member by a parent or guardian;

(C) Is identified as a criminal gang member by a documented reliable informant;

(D) Resides in or frequents a particular criminal gang's area, adopts their style or dress, their use of hand signs or their tattoos and associates with known criminal gang members;

(E) Is identified as a criminal gang member by an informant of previously untested reliability and the identification is corroborated by independent information;

(F) Has been arrested more than once in the company of identified criminal gang members for offenses that are consistent with usual criminal gang activity;

or

(G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation.

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”**

Was the defendant a “criminal gang member” at the time of committing the underlying “criminal gang offense”? In order to find the defendant guilty of being a “criminal gang member,” you must unanimously find that, at the time of the “criminal gang offense” at least two (2) of the criteria listed below were true beyond a reasonable doubt. Please indicate each of your findings by marking with an “X” either “Yes” or “No.” That the defendant, at the time of the offense:

(A) had admitted to criminal gang involvements; Yes No \_\_\_

(B) had been identified as a criminal gang member by a parent or guardian;

Yes No \_\_\_

(C) had been identified as a criminal gang member by a documented reliable informant; Yes No \_\_\_

(D) resided in or frequented a particular criminal gang’s area, adopted their style or dress, their use of hand signs or their tattoos, and associated with known criminal gang members; Yes No \_\_\_

(E) had been identified as a criminal gang member by an informant of previously untested reliability and such identification has been corroborated by independent information; Yes No \_\_\_\_

(F) (F) had been arrested more than once in the company of identified criminal gang members for offenses which are consistent with usual criminal gang activity;

Yes No \_\_\_

(G) had been identified as a criminal gang member by physical evidence such as photographs or other documentation. Yes No \_\_\_\_

Does the jury find the defendant was a “criminal gang member” by unanimously finding that, at the time of the “criminal gang offense,” at least two (2) of the above criteria were true beyond a reasonable doubt?

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

[THE TRIAL JUDGE SHOULD ONLY GIVE THE FOLLOWING INSTRUCTION IF IT IS ALLEGED IN THE INDICTMENT THAT THE DEFENDANT WAS ALSO A LEADER OR ORGANIZER OF THE CRIMINAL GANG AT THE TIME THE OFFENSE WAS COMMITTED]:

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 was also a leader or organizer of the criminal gang at the time the offense was committed. Your verdict must be unanimous.

**VERDICT FORM “D”**

Was the defendant a leader or organizer of the “criminal gang” at the time the “criminal gang offense” was committed?

Yes \_\_\_

No \_\_\_\_

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

Foreperson