

**14-381. Assault; attempted battery with intent to commit a violent felony; “household member”; essential elements.**

For you to find the defendant guilty of assault with intent to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] [as charged in Count \_\_\_\_<sup>3</sup>], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_  
(*name of victim*) by \_\_\_\_\_;<sup>4</sup>

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.<sup>5</sup>

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. The defendant also intended to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] on \_\_\_\_\_  
(*name of victim*);

4. \_\_\_\_\_ (*name of victim*) was a household member of the defendant;<sup>6</sup>

5. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**USE NOTES**

1. Use only the applicable bracketed alternatives.

2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault against a household member with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery, or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, see UJI 14-314 NMRA. For criminal sexual penetration in the first, second, or third degree, see UJIs 14-941 to 14-961 NMRA. For robbery, see UJI 14-1620 NMRA. For burglary, see UJI 14-1630 NMRA.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, see UJIs 14-5181 to 14-5184 NMRA.

6. Definition of a household member should be given, see UJI 14-370 NMRA.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]