

14-351. Assault upon a [school employee] [health care worker]; attempted battery; essential elements.

For you to find the defendant guilty of an assault on a _____¹ [as charged in Count ____]², 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 _____³;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner⁴.

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

3. At the time _____ (*name of victim*) was a _____¹ and was performing the duties of a _____^{1,5};

4. The defendant knew _____ (*name of victim*) was a _____¹;

5. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTES

1. Insert type of specially protected worker - school employee or health care worker.

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

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

4. "School employee" is defined in NMSA 1978, Section 30-3-9(A). "Health care worker" is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker's duties, an instruction may need to be drafted.

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 is given. If the issue of "lawfulness" involves self-defense or defense of another, see UJI 14-5181 NMRA to UJI 14-5184 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.]