

**14-363. Assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>1</sup> with intent to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] [as charged in Count \_\_\_\_<sup>4</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>5</sup>

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.<sup>6</sup>

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

OR

1. The defendant \_\_\_\_\_ (describe unlawful act, threat or menacing conduct);

2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner;<sup>6</sup>

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

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

5. At the time, \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup> and was performing the duties of a \_\_\_\_\_<sup>1;7</sup>

6. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_;<sup>1</sup>

7. 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. Use only the applicable bracketed alternatives.

3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault 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. 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. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

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

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

6. 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.

7. “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.

[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.]