

1 **14-308. Aggravated assault; attempted battery with intent to commit a felony; essential**
2 **elements.**

3 For you to find the defendant guilty of aggravated assault with intent to commit
4 _____¹ [as charged in Count _____]², the state must prove to your satisfaction beyond
5 a reasonable doubt each of the following elements of the crime:

6 1. The defendant intended to commit the crime of battery against _____ (*name*
7 *of victim*) by _____³];

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

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

12 3. The defendant also intended to commit the crime of _____¹;

13 4. This happened in New Mexico on or about the _____ day of _____,
14 ____.

15

16

USE NOTES

17 1. Insert the name of the felony or felonies in the disjunctive. The essential elements
18 of each felony must also be given immediately following this instruction. To instruct on the
19 elements of an uncharged offense, UJI 14-140 NMRA must be used.

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

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

1 4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as
2 provided by Use Note 1 of UJI 14-132. In addition, UJI 14-132 is given. If the issue of “lawfulness”
3 involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184.
4 [Adopted effective October 1, 1976; UJI Criminal Rule 3.07 NMSA 1978; UJI 14-308 SCRA; as
5 amended, effective January 15, 1998; as amended by Supreme Court Order No. 21-8300-025,
6 effective for all cases pending or filed on or after December 31, 2021.]

7 **Committee commentary.** – Although the statute uses the term “unlawfully”, that term has
8 not been added to this instruction as it is covered by the addition of “unlawfully” when lawfulness
9 is an issue. *See* Use Note 4.

10 *See* [~~Section 30-3-2(C)~~] NMSA 1978, § 30-3-2(C) (1963). The felony intended must be
11 other than a violent felony as defined in [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977). *See* UJIs
12 14-311, 14-312 and 14-313 NMRA and commentary if the felony intended is a violent felony.

13 At common law, an assault with intent to commit a felony was considered merely an
14 attempt to commit the felony. *See* Perkins, Criminal Law 133 (2d ed. 1969). Aggravated battery
15 and aggravated assault are lesser included offenses of the crime of attempted murder. *See State v.*
16 *Meadors*, 1995-NMSC-073, 121 N.M. 38, 908 P.2d 731 (aggravated battery is a lesser included
17 offense of attempted murder); and *State v. DeMary*, 1982-NMSC-144, ¶¶ 9-13, 99 N.M. 177, 655
18 P.2d 1021 (aggravated assault is a lesser included offense of aggravated battery).

19 Because it requires an act coupled with an intent to commit a further act, this is a specific
20 intent crime.

21 [As amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed
22 on or after December 31, 2021.]