

1 **14-311. Aggravated assault; attempted battery with intent to commit a violent felony;**  
2 **essential elements.**

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

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

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 [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] on \_\_\_\_\_  
13 (*name of victim*);

14 4. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_,  
15 \_\_\_\_\_.

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#### USE NOTES

18 1. Use only the applicable bracketed alternatives.

19 2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be  
20 used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual  
21 penetration, robbery or burglary. The essential elements of the felony or felonies must also be  
22 given immediately following this instruction. To instruct on the elements of an uncharged offense,  
23 UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual

1 penetration in the first, second or third degree, *see* UJIs 14-941 to 14-961 NMRA. For robbery,  
2 *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

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

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

5 5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as  
6 provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the  
7 issue of “lawfulness” involves self defense or defense of another, *see* UJIs 14-5181 to [UJI] 14-  
8 5184 NMRA.

9 [Adopted effective October 1, 1976; UJI Criminal Rule 3.10 NMSA 1978; UJI 14-311 SCRA; as  
10 amended, effective September 1, 1988; January 15, 1998; as amended by Supreme Court Order  
11 No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as  
12 amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or  
13 after December 31, 2021.]

14 **Committee commentary** – *See* [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977). *See also*  
15 committee commentaries to UJIs 14-301 [NMRA] and [UJI] 14-304 NMRA.

16 [~~Instructions~~] UJIs 14-311, 14-312, and 14-313 NMRA are used only where the assault is  
17 accompanied by an intent to commit mayhem, rape, robbery or burglary. The statute provides for  
18 an assault with intent to kill or with intent to commit any murder. The courts have had problems  
19 in developing a distinction between the two types of intent. In *State v. Melendrez*, 1945-NMSC-  
20 020, 49 N.M. 181, 159 P.2d 768 [~~(1945)~~], the Court determined that an assault with intent to kill  
21 was different from an assault with intent to murder. The basis for the distinction was that an assault  
22 with intent to kill may be committed without malice, whereas an assault with intent to murder  
23 required malice aforethought. This distinction no longer is viable under the current murder statute,

1 ~~[Section 30-2-1]~~ NMSA 1978, § 30-2-1 (1994), which no longer incorporates the malice concept.  
2 Assault with intent to commit murder therefore no longer is different from assault with intent to  
3 kill.

4 In *State v. Rogers*, 1926-NMSC-028, 31 N.M. 485, 247 P. 828 [~~(1926)~~], the court held that  
5 a depraved-mind murder, which does not require intent to kill, could not form the basis for an  
6 assault with intent to murder. *See also State v. Cowden*, 1996-NMCA-051, 121 N.M. 703, 917  
7 P.2d 972 [~~(Ct.App. 1996)~~] (conviction of both assault with intent to commit a violent felony,  
8 murder, [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977), and for aggravated battery with a deadly  
9 weapon, [~~Section 30-3-5(C)~~] NMSA 1978, § 30-3-5(C) (1969)); [~~and~~] *State v. Fuentes*, 1994-  
10 NMCA-158, 119 N.M. 104, [~~104,~~] 888 P.2d 986[~~, 986 (Ct.App. 1994)~~].  
11 [As amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed  
12 on or after December 31, 2021.]