

1 **14-358. Aggravated assault on a [school employee] [health care worker]; attempted battery**
2 **with intent to commit a felony; essential elements.**

3 For you to find the defendant guilty of aggravated assault on a _____¹ with intent to
4 commit _____² [as charged in Count ____]³, 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 _____⁴;

8 A battery consists of intentionally touching or applying force in a rude, insolent or angry
9 manner⁵.

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 _____²;

13 4. At the time, _____ (*name of victim*) was a _____¹ and was performing
14 the duties of a _____^{1,6};

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

16 6. This happened in New Mexico on or about the ____ day of _____,
17 _____.

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19

USE NOTES

20 1. Insert type of specially protected worker - school employee[~~-, sports official,~~] or
21 health care worker.

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

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

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

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

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

15 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
16 after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all
17 cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No.
18 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]

19 **Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not
20 specifically require that the defendant be aware that the victim is a specially protected worker, the
21 New Mexico Court of Appeals held that such knowledge is required for health care workers
22 (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of
23 the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M.

1 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially
2 identical to that for health care workers, the Committee believes it is a natural extension to include
3 the knowledge requirement for all such workers.
4 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
5 after December 31, 2014.]