

1 **14-359. Aggravated assault on a [school employee] [health care worker]; threat or menacing**
2 **conduct 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
5 beyond a reasonable doubt each of the following elements of the crime:

6 1. The defendant _____ (*describe unlawful act, threat or menacing conduct*);

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

9 3. The defendant knew _____ (*name of victim*) was a _____;¹

10 4. The defendant's conduct caused _____ (*name of victim*) to believe that the
11 defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal
12 safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry
13 manner⁵;

14 5. A reasonable person in the same circumstances as _____ (*name of victim*)
15 would have had the same belief;

16 6. The defendant intended to commit the crime of _____²;

17 7. This happened in New Mexico on or about the ___ day of _____,
18 _____.

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USE NOTES

21 1. Insert type of specially protected worker - school employee[~~, sports official,~~] or
22 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. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Health care
6 worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not
7 the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA
8 must be given. If there is an issue as to whether the victim was within the lawful discharge of the
9 worker’s duties, an instruction may need to be drafted.

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

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

17 **Committee commentary.** – Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not
18 specifically require that the defendant be aware that the victim is a specially protected worker, the
19 New Mexico Court of Appeals held that such knowledge is required for health care workers
20 (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of
21 the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M.
22 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially

- 1 identical to that for health care workers, the Committee believes it is a natural extension to include
- 2 the knowledge requirement for all such workers.
- 3 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
- 4 after December 31, 2014.]