

1 **14-360. Aggravated assault on a [school employee] [health care worker]; attempted battery;**
2 **threat or menacing 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 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 OR

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

14 2. The defendant's conduct caused _____ (*name of victim*) to believe the
15 defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal
16 safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry
17 manner⁵;

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

20 AND

21 4. The defendant also intended to commit the crime of _____²;

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

1 cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No.
2 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]

3 **Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not
4 specifically require that the defendant be aware that the victim is a specially protected worker, the
5 New Mexico Court of Appeals held that such knowledge is required for health care workers
6 (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of
7 the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M.
8 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially
9 identical to that for health care workers, the Committee believes it is a natural extension to include
10 the knowledge requirement for all such workers.

11 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
12 after December 31, 2014.]