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 a1 with inter-	nt to				
4	commit2 [as charged in Count] ³ , the state must prove to your satisfaction bey	ond				
5	a reasonable doubt each of the following elements of the crime:					
6	1. The defendant intended to commit the crime of battery against (no	ame				
7	<i>of victim</i>) by ⁴ ;					
8	A battery consists of intentionally touching or applying force in a rude, insolent or ar	ıgry				
9	manner ⁵ .					
10	2. The defendant began to do an act which constituted a substantial part of the bat	tery				
11	but failed to commit the battery;					
12	OR					
13	1. The defendant (describe unlawful act, threat or menacing conduct	t);				
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 person	onal				
16	safety by touching or applying force to (name of victim) in a rude, insolent or ar	ıgry				
17	manner ⁵ ;					
18	3. A reasonable person in the same circumstances as (name of vic.	tim)				
19	would have had the same belief;					
20	AND					
21	4. The defendant also intended to commit the crime of²;					
22	5. At the time, (name of victim) was a and was perform	ning				
23	the duties of a					

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1	6.	The defendant knew	(name of victim) was a			
2	7.	This happened in New	Mexico on or about the day	of,		
3						
4						
5			USE NOTES			
6	1.	Insert type of specially pro	tected worker - school employee or h	ealth care worker.		
7	2.	Insert the name of the felo	ny or felonies in the disjunctive. The	essential elements		
8	of each felony must also be given immediately following this instruction. [See UJI 14-140					
9	NMRA.] To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.					
10	3.	Insert the count number if	more than one count is charged.			
11	4.	Use ordinary language to d	lescribe the touching or application of	force.		
12	5.	If the "unlawfulness" of t	the act is in issue, add unlawfulness	as an element as		
13	provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the					
14	issue of "lawfulness" involves self-defense or defense of another, see UJIs 14-5181 [NMRA] to					
15	[UJI] 14-5184 NMRA.					
16	6.	"School employee" is def	ined in NMSA 1978, Section 30-3-9	(A). "Health care		
17	worker" is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not					
18	the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA					
19	must be given. If there is an issue as to whether the victim was within the lawful discharge of the					
20	worker's duties, an instruction may need to be drafted.					
21	[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or					
22	after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all					

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- 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.]

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