

1 **14-361. Assault on a [school employee] [health care worker]; attempted battery with intent**
2 **to commit a violent felony; essential elements.**

3 For you to find the defendant guilty of aggravated assault on a _____¹ with intent to
4 [kill] [or]² [commit _____³] [as charged in Count ____]⁴, the state must prove to your
5 satisfaction beyond 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 _____⁵;

8 A battery consists of intentionally touching or applying force in a rude, insolent or angry
9 manner⁶.

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

14 4. The defendant knew _____ (*name of victim*) was a _____¹;

15 5. The defendant also intended to [kill] [or]² [commit _____³] on _____
16 (*name of victim*);

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

19

20

USE NOTES

21 1. Insert type of specially protected worker - school employee or health care worker.

22 2. Use only the applicable bracketed alternatives.

1 3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be
2 used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual
3 penetration, robbery or burglary. The essential elements of the felony or felonies must also be
4 given immediately following this instruction. To instruct on the elements of an uncharged offense,
5 UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual
6 penetration in the first, second or third degree, *see* UJI§ 14-941 to 14-961 NMRA. For robbery,
7 *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

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

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

10 6. 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 7. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Health care
15 worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not
16 the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA
17 must be given. If there is an issue as to whether the victim was within the lawful discharge of the
18 worker’s duties, an instruction may need to be drafted.

19 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
20 after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all
21 cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No.
22 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]

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

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