

1 **14-363. Assault on a [school employee] [health care worker]; attempted battery; threat or**
2 **menacing conduct with intent 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 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 manner⁶;

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 [kill] [or]² [commit _____³] on _____
22 (*name of victim*);

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

3 6. The defendant knew _____ (*name of victim*) was a _____¹;

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

6

7

USE NOTES

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

9 2. Use only the applicable bracketed alternatives.

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

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

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

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

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

6 [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
7 after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all
8 cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No.
9 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]

10 **Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not
11 specifically require that the defendant be aware that the victim is a specially protected worker, the
12 New Mexico Court of Appeals held that such knowledge is required for health care workers
13 (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of
14 the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M.
15 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially
16 identical to that for health care workers, the Committee believes it is a natural extension to include
17 the knowledge requirement for all such workers.

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