

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2023-020**

March 24, 2023

The Uniform Jury Instructions - Criminal Committee has recommended new Uniform Jury Instruction 14-135 NMRA and amendments to Uniform Jury Instructions 14-305, 14-306, 14-355, 14-356, 14-375, 14-376, 14-2202, and 14-2203 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 24, 2023, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]

14-135. "Use" of a deadly weapon; defined.

"Use" of a deadly weapon during an assault means the following:

1. A deadly weapon was present at some point during the encounter;
2. _____ (*name of victim*) knew, or based on the defendant's words or actions, _____ (*name of victim*) had reason to know that the defendant had a deadly weapon; and
3. The defendant intentionally used the presence of the weapon to facilitate the assault.

USE NOTE

Use with UJI 14-305, UJI 14-306, UJI 14-355, UJI 14-356, UJI 14-375, UJI 14-376, UJI 14-2202, and UJI 14-2203 NMRA.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — In *State v. Zachariah G.*, 2022-NMSC-003, ¶ 3, 501P.3d 451, the Supreme Court held that a defendant *uses* a deadly weapon to commit an assault when the defendant makes *facilitative use* of the deadly weapon. In the context of assault by use of a deadly weapon by threat, facilitative use of a deadly weapon is distinct from incidental exposure or mere

possession and “may be found where (1) a deadly weapon is present at some point during the encounter, (2) the victim knows or, based on the defendant’s words or actions, has reason to know that the defendant has a deadly weapon, and (3) the presence of the weapon is intentionally used to facilitate the commission of the assault.” *Id.* ¶ 19.

The *Zachariah G.* Court did not specifically address the applicability of this definition of facilitative use for crimes involving the use of a deadly weapon that constitutes an express or implied threat, outside the context of assault. Committee commentary to UJI 14-914 discusses the meaning of “armed with a deadly weapon” in the context of criminal sexual penetration, criminal sexual contact, or criminal sexual contact of a minor.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

14-305. Aggravated assault; threat or menacing conduct with a deadly weapon; essential elements

For you to find the defendant guilty of aggravated assault by use¹ of a deadly weapon [as charged in Count _____],^[1] ² the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

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

2. The defendant’s conduct caused _____ (*name of victim*) to believe the defendant was about to intrude on _____’s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry manner;^[2] ³

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

4. The defendant used¹ a [_____] ^[3] ⁴ [deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm]^[4] ⁵;^[5] ⁶

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

USE NOTES

1. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

~~[1-]~~ 2. Insert the count number if more than one count is charged.

~~[2-]~~ 3. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132. In addition, UJI 14-132 is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184.

~~[3-]~~ 4. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.

~~[4-]~~ 5. UJI 14-131, the definition of “great bodily harm,”^[5] must also be given.

~~[5-]~~ 6. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.04 NMSA 1978; UJI 14-305 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — See committee commentary following UJI 14-302 NMRA for a discussion on the element of “lawfulness”. See also the committee commentary to UJI 14-304 NMRA.

14-306. Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault by use² of a deadly weapon [as charged in Count _____],^[2]³ the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against _____ (name of victim) by _____;^[3-]⁴

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.^[4]⁵

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

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

2. The defendant’s conduct caused _____ (name of victim) to believe the defendant was about to intrude on _____’s (name of victim) bodily integrity or personal safety by touching or applying force to _____ (name of victim) in a rude, insolent or angry manner; ^[4]⁵

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

AND

4. The defendant used² a [_____] ^[5]⁶ [deadly weapon. The defendant used a _____ (name of object). A _____ (name of object) is a deadly weapon only if you find that a _____ (name of object), when used as a weapon, could cause death or great bodily harm^[6]⁷];^[7]⁸ and

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

USE NOTES

1. This instruction sets forth the elements of two of the types of assault in Section 30-3-1 NMSA 1978; one type involves attempted battery and the other involves a threat or menacing conduct which causes another to reasonably believe he is about to be struck. If the evidence supports both of these theories of assault, use this instruction.

2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

~~[2-]~~ 3. Insert the count number if more than one count is charged.

~~[3-]~~ 4. Use ordinary language to describe the touching or application of force.

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

[5-] 6. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.

[6-] 7. UJI 14-131, the definition of “great bodily harm,”[7] must also be given.

[7-] 8. This alternative is given only if the object used is not a “deadly weapon” which is specifically listed in Section 30-1-12B NMSA 1978.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.05 NMSA 1978; UJI 14-306 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* committee commentary following UJI 14-304 NMRA.

14-355. Aggravated assault on a [school employee] [sports official] [health care worker]; threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a _____² by use³ of a deadly weapon [as charged in Count _____],[³]⁴ the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

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

2. The defendant’s conduct caused _____ (*name of victim*) to believe that the defendant was about to intrude on _____’s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry manner;[⁴]⁵

3. At the time, _____ (*name of victim*) was a _____² and was performing duties of a _____²;[⁵]⁶

4. The defendant knew _____ (*name of victim*) was a _____.²

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

6. The defendant used³ a [_____] [6]⁷ [deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm[⁷]⁸;[⁸]⁹

7. This happened in New Mexico on or about the ____ day of _____, ____.

USE NOTES

1. If the evidence supports both this theory of assault as well as that found in UJI 14-354 NMRA, then UJI 14-356 NMRA should be given instead of this instruction.

2. Insert type of specially protected worker - school employee, sports official, or health care worker.

3. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

~~[3-]~~ 4. Insert the count number if more than one count is charged.

~~[4-]~~ 5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 NMRA to UJI 14-5184 NMRA;

~~[5-]~~ 6. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Sports official” is defined in NMSA 1978, Section 30-3-9.1(A). “Health care worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker's duties, an instruction may need to be drafted.

~~[6-]~~ 7. Use this alternative only if the deadly weapon is specifically listed in NMSA 1978, Section 30-1-12(B).

~~[7-]~~ 8. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

~~[8-]~~ 9. This alternative is given only if the object used is not specifically listed in NMSA 1978, Section 30-1-12(B).

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

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

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

14-356. Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery; threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a ² by use³ of a deadly weapon [as charged in Count],^[3]⁴ the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against
(*name of victim*) by ;^[4]⁵

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.^[5]⁶

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

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

2. The defendant's conduct caused _____ (*name of victim*) to believe the defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry manner;^[5]⁶

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

AND

4. The defendant used³ a [_____] [⁶]⁷ [deadly weapon. The defendant used§ a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm^[7]⁸];^[8]⁹

5. At the time, _____ (*name of victim*) was a _____² and was performing the duties of a _____²; [⁹]¹⁰

6. The defendant knew _____ (*name of victim*) was a _____,²

7. This happened in New Mexico on or about the ____ day of _____, ____.

USE NOTES

1. This instruction combines the elements of UJI 14-354 NMRA and UJI 14-355 NMRA. If the evidence supports both of the theories of assault set forth in UJIs 14-354 and 14-355, use this instruction.

2. Insert type of specially protected worker - school employee, sports official, or health care worker.

3. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of "use," must also be given.

[3-] 4. Insert the count number if more than one count is charged.

[4-] 5. Use ordinary language to describe the touching or application of force.

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

[6-] 7. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in NMSA 1978, Section 30-1-12(B).

[7-] 8. UJI 14-131 NMRA, the definition of "great bodily harm," must also be given.

[8-] 9. This alternative is given only if the object used is not specifically listed in NMSA 1978, Section 30-1-12(B).

[9-] 10. "School employee" is defined in NMSA 1978, Section 30-3-9(A). "Sports official" is defined in NMSA 1978, Section 30-3-9.1(A). "Health care worker" is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker's duties, an instruction may need to be drafted.

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

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

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

14-375. Aggravated assault; threat or menacing conduct with a deadly weapon; “household member”; essential elements.

For you to find the defendant guilty of aggravated assault by use¹ of a deadly weapon [as charged in Count _____],^[1]² the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant _____ (*describe unlawful act, threat, or menacing conduct*);^[2]³

2. The defendant's conduct caused _____ (*name of victim*) to believe that the defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent, or angry manner;^[3]⁴

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

4. The defendant used¹ a [^[4]⁵ _____] [^[4]⁵ deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm^[5]⁶];^[6]⁷

5. _____ (*name of victim*) was a household member of the defendant;^[7]⁸

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

USE NOTES

1. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

[1-] 2. Insert the count number if more than one count is charged.

[2-] 3. Use ordinary language to describe the touching or application of force.

[3-] 4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 is given. If the issue of

“lawfulness” involves self defense or defense of another, *see* UJI 14-5181 NMRA to UJI 14-5184 NMRA. Use ordinary language to describe the touching or application of force.

[4-] 5. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in NMSA 1978, Section 30-1-12B.

[5-] 6. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

[6-] 7. This alternative is given only if the object used is not specifically listed in Section 30-1-12B.

[7-] 8. Definition of a household member should be given, *see* UJI 14-370 NMRA.

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

14-376. Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; “household member”; essential elements.¹

For you to find the defendant guilty of aggravated assault by use² of a deadly weapon against a household member [as charged in Count _____],^[2]³ the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against _____
(*name of victim*) by _____;^[3]⁴

A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner.^[4]⁵

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant _____ (*describe unlawful act, threat, or menacing conduct*);^[3]⁴

2. The defendant's conduct caused _____ (*name of victim*) to believe that the defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent, or angry manner; ^[4]⁵ and

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

AND

4. The defendant used² a [_____] ^[5]⁶ [deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm^[6]⁷; ^[7]⁸

5. _____ (*name of victim*) was a household member of the defendant;^[8]⁹

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

USE NOTES

1. This instruction sets forth the elements of two of the types of aggravated assault against a household member in NMSA 1978, Section 30-3-13.

2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

~~[2-]~~ 3. Insert the count number if more than one count is charged.

~~[3-]~~ 4. Use ordinary language to describe the touching or application of force.

~~[4-]~~ 5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJI 14-5181 NMRA to UJI 14-5184 NMRA.

~~[5-]~~ 6. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in NMSA 1978, Section 30-1-12B.

~~[6-]~~ 7. UJI 14-131 NMRA, the definition of “great bodily harm,”^[7] must also be given.

~~[7-]~~ 8. This alternative is given only if the object used is not a “deadly weapon” which is specifically listed in Section 30-1-12B.

~~[8-]~~ 9. Definition of a household member should be given, *see* UJI 14-370 NMRA.

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

14-2202. Aggravated assault on a peace officer; threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a peace officer by use² of a deadly weapon [as charged in Count _____]^[2]³, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

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

2. At the time, _____ (*name of peace officer*) was a peace officer and was performing duties of a peace officer^[8]⁹;

3. The defendant knew _____ (*name of peace officer*) was a peace officer;

4. The defendant's conduct caused _____ (*name of peace officer*) to believe the defendant was about to intrude on _____'s (*name of peace officer*) bodily integrity or personal safety by touching or applying force to _____ (*name of peace officer*) in a rude, insolent or angry manner;

5. The defendant's conduct^[3]⁴

[threatened the safety of _____ (*name of peace officer*);]

[or]^[4]⁵

[challenged the authority of _____ (*name of peace officer*);]

6. A reasonable person in the same circumstances as _____ (*name of peace officer*) would have had the same belief;

7. The defendant used² a [_____]^[5]⁶ [deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a

deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm^[6]^[7]^[8];

8. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. If the evidence supports both this theory of assault as well as that found in UJI 14-2201 NMRA, then UJI 14-2203 NMRA should be given instead of this instruction.

2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.

[2-] 3. Insert the count number if more than one count is charged.

[3-] 4. In *State v. Padilla*, 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be “unlawful” the state must prove “injury or conduct that threatens an officer's safety or meaningfully challenges his or her authority.” If any other issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184 NMRA.

[4-] 5. Use only applicable alternative or alternatives.

[5-] 6. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.

[6-] 7. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

[7-] 8. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.

[8-] 9. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer's duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, *see* UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.01 NMSA 1978; UJI 14-2202 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* committee commentary for UJI 14-2201 NMRA. This instruction was amended in 2010 to be consistent with *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

14-2203. Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a peace officer by use² of a deadly weapon [as charged in Count _____]^[2]³, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against _____
(*name of peace officer*) by _____^[3]⁴;

A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner.^[4]⁵

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

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

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

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

AND

4. At the time, _____ (*name of peace officer*) was a peace officer and was performing duties of a peace officer^[5]⁶;

5. The defendant knew _____ (*name of peace officer*) was a peace officer.

6. The defendant's conduct^[4]⁵

[threatened the safety of _____ (*name of peace officer*);]^[5]⁶

[or]^[6]⁷

[challenged the authority of _____ (*name of peace officer*);]

7. The defendant used² a [_____]⁷ [deadly weapon. The defendant used a _____ (*name of object*). A _____ (*name of object*) is a deadly weapon only if you find that a _____ (*name of object*), when used as a weapon, could cause death or great bodily harm^[8]⁹]^[9]¹⁰;

8. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. This instruction combines the elements of UJI 14-2201 and 14-2202 NMRA. If the evidence supports both of the theories of assault set forth in UJI 14-2201 and 14-2202 NMRA, use this instruction.

2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of "use," must also be given.

[2-] 3. Insert the count number if more than one count is charged.

[3-] 4. Use ordinary language to describe the touching or application of force.

[4-] 5. In *State v. Padilla*, 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be "unlawful" the state must prove "injury or conduct that threatens an officer's safety or meaningfully challenges his or her authority." If any other issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the

issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184 NMRA.

[5-] 6. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer's duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, *see* UJI 14-5120 NMRA.

[6-] 7. Use only applicable alternative or alternatives.

[7-] 8. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.

[8-] 9. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

[9-] 10. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.02 NMSA 1978; UJI 14-2203 SCRA; as amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 21-8300-031, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* committee commentary for UJI 14-2201 NMRA. This instruction was amended in 2010 to be consistent with *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]

**No Comments
Received**