### 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 <a href="http://supremecourt.nmcourts.gov/open-for-comment.aspx">http://supremecourt.nmcourts.gov/open-for-comment.aspx</a> 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: A deadly weapon was present at some point during the encounter; 1. (name of victim) knew, or based on the defendant's words or 2. (name of victim) had reason to know that the defendant had a deadly actions, 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 use of a deadly weapon [as charged in Count \_\_\_\_\_\_\_, $[^{+}]$  the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime: 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;  $[^2]^{\frac{3}{2}}$ A reasonable person in the same circumstances as (name of victim) would have had the same belief; 4. The defendant used  $^1$  a [ [ ]  $[^3]$   $^4$  [deadly weapon. The defendant used a [ [ ] [ [ ] [ ] [ ] [ [ ] [ ] [ ] [ ] [ [ ] [ [ ] [ ] [ ] [ [ ] [ ] [ [ ] [ ] [ [ ] [ ] [ [ ] [ ] [ [ ] [ ] [ [ ] [ [ ] [ ] [ [ ] [ [ ] [ ] [This happened in New Mexico on or about the

- 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," [-] 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. <sup>1</sup>	
For you to find the defendant guilty of aggravated assault by use <sup>2</sup> of a deadly weapon [as	
charged in Count	
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]\$\frac{4}{2}\$  A battery consists of intentionally touching or applying force in a rude, insolent or angry	
manner. $\begin{bmatrix} 4 \end{bmatrix} \frac{5}{2}$	
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; $[4]^{\frac{5}{2}}$	
3. A reasonable person in the same circumstances as (name of	r
victim) would have had the same belief;	
AND	
4. The defendant used <sup>2</sup> 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	

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

also be given.

[3.]  $\underline{4.}$  Use ordinary language to describe the touching or application of force.

- [4-] <u>5.</u> 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," [-] 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. Aggrav	vated assault o	n a [school	<b>employee</b> ]	[sports	official]	[health	care	worker];
threat or mena	icing conduct w	ith a deadly	weapon; e	ssential	elements	•1		

micat of mic	macing conduct with a deadily wea	pon, essentiai e	Acincines.	
For ye	ou to find the defendant guilty of ag	gravated assault	on a	<sup>2</sup> by
	lly weapon [as charged in Count			
beyond a reas	sonable doubt each of the following	elements of the	crime:	
1.	The defendant	(describe u	nlawful act, th	reat or menacing
conduct);			-	_
2.	The defendant's conduct caused		(name of	<i>victim</i> ) to believe
that the defe	endant was about to intrude on		's (name	of victim) bodily
integrity or p	personal safety by touching or appl			
	ude, insolent or angry manner;[4]5			
3.	At the time,	(name of victi	im) was a	2
and was perfo	orming duties of a	<sup>2</sup> ;[ <sup>5</sup> ] <sup>6</sup>		_
	The defendant knew		(name of	victim) was a
	.2		,	,
5.	A reasonable person in the same ci	ircumstances as		(name of
victim) would	d have had the same belief;			
6.	The defendant used $\frac{3}{2}$ a [	][ <del>6</del> ] <u>7</u>	deadly weap	on. The defendant
used a	(name of object).	A	(nai	me of object) is a
deadly weapo	on only if you find that a	$\overline{\hspace{1cm}}$	ame of object	), when used as a
weapon, coul	d cause death or great bodily harm[7	$\frac{1^8}{1^8}$ ; $\frac{8^9}{1^9}$		
7.	This happened in New Mexico on	or about the	day of	,
weapon, coul	d cause death or great bodily harm[7	$[\frac{1}{3}]$ ; $[\frac{8}{3}]$		), when used as a

- 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-] <u>5.</u> 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.<sup>1</sup>

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_\_2 by use<sup>3</sup> of a deadly weapon [as charged in Count \_\_\_\_\_\_],[³]<sup>4</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

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 co	nduct);	
2.	The defendant's conduct caused	(name of victim) to believe
the defendan	t was about to intrude on	's (name of victim) bodily integrity or
personal safe	ety by touching or applying force to	(name of victim) in a rude,
insolent or an	ngry manner;[ <sup>5</sup> ] <sup><u>6</u></sup>	
3.	A reasonable person in the same cir	reumstances as (name of
victim) would	d have had the same belief;	
AND		
4.	The defendant used $\frac{3}{2}$ a [	] $[^{6}]^{7}$ [deadly weapon. The defendant
used§ a	(name of object).	A (name of object) is a
deadly weap	on only if you find that a	(name of object), when used as a
weapon, cou	ld cause death or great bodily harm $[^7]$	<sup>8</sup> ];[ <del>8</del> ] <del>9</del>
5.	At the time,	(name of victim) was a2
and was perf	forming the duties of a	<sup>2</sup> ;[ <sup>9]</sup> ] <sup>10</sup>
6.	The defendant knew	(name of victim) was a
	;2	
7.	This happened in New Mexico on o	r about the day of,

- 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-] <u>6.</u> 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 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. 16-8300-008, 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 protecte worker, the New Mexico Court of Appeals held that such knowledge is required for health car workers (Section 30-3-9.2) in State v. Valino, 2012-NMCA-105, 287 P.3d 372. This was a 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 ar essentially identical to that for health care workers, the Committee believes it is a natural extensio 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 cafter December 31, 2014.]
14-375. Aggravated assault; threat or menacing conduct with a deadly weapon; "householemember"; essential elements.
For you to find the defendant guilty of aggravated assault by use of a deadly weapon [a
charged in Count], $[^{4}]^{2}$ the state must prove to your satisfaction beyond a reasonable doubter.
each of the following elements of the crime:
1. The defendant (describe unlawful act, threat, or menacing
$conduct); [^2]^{\frac{3}{2}}$
2. The defendant's conduct caused (name of victim) to believ
that the defendant was about to intrude on's (name of victim) bodil
integrity or personal safety by touching or applying force to (name of
<i>victim</i> ) in a rude, insolent, or angry manner; $[^3]^{\frac{4}{}}$
3. A reasonable person in the same circumstances as (name of
victim) would have had the same belief;
victim) would have had the same belief;  4. The defendant used a [
defendant used a (name of object). A (name of object)
defendant used a (name of object). A (name of object) is a deadly weapon only if you find that a (name of object), whe used as a weapon, could cause death or great bodily harm[5] 6];[6] 7
used as a weapon, could cause death or great bodily harm[ $^{\circ}$ ] $^{\circ}$ ];[ $^{\circ}$ ] $^{\perp}$
5. (name of victim) was a household member of th
defendant; $[^7]^{\underline{8}}$
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," mus
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" i	nvolves self defense or defense of another, see UJI 14-5181 NMRA to UJI 14-5184
NMRA. Use o	ordinary language to describe the touching or application of force.
[4 <del>.</del> ] <u>5.</u>	Insert the name of the weapon. Use this alternative only if the deadly weapon is
	sted in NMSA 1978, Section 30-1-12B.
	UJI 14-131 NMRA, the definition of "great bodily harm," must also be given.
	This alternative is given only if the object used is not specifically listed in Section
30-1-12B.	
	Definition of a household member should be given, see UJI 14-370 NMRA.
	Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or
	er 31, 2014; as amended by Supreme Court Order No, effective for all cases
	ed on or after .]
14-376. Aggra	avated assault; attempted battery; threat or menacing conduct with a deadly
	isehold member"; essential elements. <sup>1</sup>
For yo	ou to find the defendant guilty of aggravated assault by use <sup>2</sup> of a deadly weapon
	sehold member [as charged in Count], $[^2]^3$ the state must prove to your
	yond a reasonable doubt each of the following elements of the crime:
	The defendant intended to commit the crime of battery against
A batte	n) by; $[^3]^{\frac{4}{}}$ ery consists of intentionally touching or applying force in a rude, insolent, or angry
manner.[ <sup>4</sup> ] <u>-5</u>	
2.	The defendant began to do an act which constituted a substantial part of the battery
but failed to co	ommit the battery;
OR	
	The defendant (describe unlawful act, threat, or menacing
$conduct$ ); $[^3] \frac{4}{}$	
	The defendant's conduct caused (name of victim) to believe
that the defen	ndant was about to intrude on's (name of victim) bodily
	ersonal safety by touching or applying force to (name of
	de, insolent, or angry manner; [ <sup>4</sup> ] <sup>5</sup> and
	A reasonable person in the same circumstances as (name of
	have had the same belief;
AND	1 1 1 1 1 1 1 1
1	The defendant used $^2$ a [][ $^5$ ] $^6$ [deadly weapon. The defendant
used a	name of object). A (name of object) is a n only if you find that a (name of object), when used as a
deadly weapor	n only if you find that a (name of object), when used as a
weapon, could	I cause death or great bodily harm[ <sup>6</sup> ] <sup>7</sup> ];[ <sup>7</sup> ] <sup>8</sup>
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,
	··· ··· ·· ·· ·· ·· ·· ·· ·· ·· ·· ·· ·

- 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-] <u>5.</u> 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.] <u>6.</u> 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.	2. Aggravated assault on a peace officer; threat or mena	acing conduct with a deadly
weapon;	n; essential elements. <sup>1</sup>	
E	For you to find the defendant quilty of aggregated assault of	on a nagga officer by $uga^2$ of a

LOL	you to find the defendant guilty of ag	ggravated assault on a peace officer by use- of a
deadly wear	oon [as charged in Count	$[2]^{3}$ , the state must prove to your
satisfaction	beyond a reasonable doubt each of the	e 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 perform	ning 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 integ	rity or personal safety by touching or	r applying force to (name
of peace offi	icer) in a rude, insolent or angry man	ner;
5.	The defendant's conduct $[^3]^4$	
[thre	atened the safety of	(name of peace officer);]
[or][	<sup>4</sup> ] <sup>5</sup>	
[chal	llenged the authority of	(name of peace officer);]
6.	A reasonable person in the same of	circumstances as (name of
peace office	r) would have had the same belief;	
7.	The defendant used <sup>2</sup> a [	] $[5]^6$ [deadly weapon. The defendant
used a	(name of object)	$\Delta$ (name of object) is a

weapon, could ca	only if you find that aause death or great bodily his happened in New	/ harm[ <sup>6</sup> ] <sup>7</sup> ][ <sup>7</sup> ] <sup>8</sup> ; Mexico on or	(name of object), about the	when used as a
	_,·	USE NOTES		
2201 NMRA, the  2. If  also be g  [2-] 3. Ir  [3-] 4. Ir  Court held that to the state must pro	The evidence supports been UJI 14-2203 NMRA so the weapon is in siven.  Insert the count number if the state v. Padilla, 1996-No satisfy the Section 30-22 ove "injury or conduct that ity." If any other issue of	hould be given ins issue, UJI 14-135 more than one county MCA-072, 122 N2-24 NMSA 1978 to threatens an office	nt is charged.  J.M. 92, 920 P.2d 10 requirement that the acer's safety or meaning	n. n of "use," must 46, the Supreme ct be "unlawful" gfully challenges
provided by Use	Note 1 of UJI 14-132 Naess" involves self-defens	MRA. In addition	n, UJI 14-132 NMR <i>A</i>	A is given. If the
[4.] <u>5.</u> U [ <u>5.</u> ] <u>6.</u> U 12B NMSA 197 [ <del>6.</del> ] <u>7.</u> U [ <del>7.</del> ] <u>8.</u> T	JI 14-131 NMRA, the de his alternative is given or	the deadly weapor	n is specifically listed podily harm," must al	so be given.
is an issue as to defines "peace of of the officer's du UJI 14-2216 NM mistake of fact is [Adopted, effect as amended, effect No. 10-8300-03	A 1978. Peace officer" is defined in whether or not the victimal fricer." If there is an issue that it is, an instruction may not make the series of the series as a defense, see that it is of the country of the series of the s	n was a peace office as to whether the cheed to be drafted. Intended into this instruUJI 14-5120 NMR Criminal Rule 22. February 1, 2000; 31, 2010; as ame	cer, give UJI 14-2210 officer was within the The mistake of fact reduction as an element A.  01 NMSA 1978; UJI as amended by Supremeded Sup	6 NMRA, which lawful discharge ferred to in prior t. If some other 14-2202 SCRA; eme Court Order
Commits instruction was a 142, 207 P.3d 11	tee commentary. — See amended in 2010 to be condition.	committee comm nsistent with <i>State</i>	entary for UJI 14-22 v. <i>Nozie</i> , 2009-NMS0	C-018, 146 N.M.
14-2203. Aggra conduct with a For your deadly weapon	vated assault on a peace deadly weapon; essentiate find the defendant guil [as charged in Count and a reasonable doubt each	ce officer; attemp al elements. <sup>1</sup> Ity of aggravated a	oted battery or thre assault on a peace off $[2]^{\frac{3}{2}}$ , the state must	at or menacing icer by use <sup>2</sup> of a st prove to your

1.	The defendant intended to commit the	the crime of battery against	
(name of pea	ce officer) by[³	$]^{4};$	
A bat	tery consists of intentionally touching	[] <sup>4</sup> ; or applying force in a rude, insolent, or angr	y
manner. $[^4]^{\underline{5}}$			•
2.	The defendant began to do an act wh	nich constituted a substantial part of the batter	y
but failed to	commit the battery;	_	-
OR			
1.	The defendant	_ (describe unlawful act, threat or menacin	ıg
conduct);		_ ` `	_
2.	The defendant's conduct caused	(name of peace officer) t	to
believe the d	efendant was about to intrude on	(name of peace officer) t 's (name of peace officer	r)
bodily integri	ity or personal safety by touching or a	applying force to (name	ıe
	eer) in a rude, insolent or angry manner		
3.	A reasonable person in the same circ	cumstances as (name of	of .
peace officer	) would have had the same belief;		
AND			
		(name of peace officer) was a peace officer an	ıd
was performi	ng duties of a peace officer $[5]^6$ ;		
5.	The defendant knew	(name of peace officer) was a peac	e
officer.			
	The defendant's conduct $[4]^{5}$		
[threa	tened the safety of	(name of peace officer);] $[5]^{6}$	
[or][ <sup>6</sup> ]	$]^{\underline{7}}$		
[chall	enged the authority of	(name of peace officer);]] <sup>7</sup> [deadly weapon. The defendan	
7.	The defendant used $^2$ a [	] <sup>7</sup> [deadly weapon. The defendar	nt
used a	(name of object). A	(name of object) is	a
deadly weapo	on only if you find that a	(name of object), when used as	a
	d cause death or great bodily harm[8]9		
8.	This happened in New Mexico	on or about the day of	of
	,·		
	TICE	NOTEC	

- 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-] <u>5.</u> 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