

**14-354. Aggravated assault on a [school employee] [sports official] [health care worker]; attempted battery with a deadly weapon; essential elements.<sup>1</sup>**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>2</sup> by use of a deadly weapon [as charged in Count \_\_\_\_]<sup>3</sup>, 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 \_\_\_\_\_<sup>4</sup>;  
A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>5</sup>.
2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;
3. The defendant used a [\_\_\_\_\_] <sup>6</sup> [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<sup>7</sup>]<sup>8</sup>;
4. At the time, \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>2</sup> and was performing the duties of a \_\_\_\_\_<sup>2,9</sup>;
5. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>2</sup>;
6. 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 14-355 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. Insert the count number if more than one count is charged.
4. Use ordinary language to describe the touching or application of force.
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.
6. 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. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.
8. This alternative is given only if the object used is not specifically listed in NMSA 1978, Section 30-1-12(B).
9. “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.

[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.]