

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

For you to find the defendant guilty of aggravated assault by use<sup>2</sup> of a deadly weapon against a household member [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;  
OR
  1. The defendant \_\_\_\_\_ (*describe unlawful act, threat, or menacing conduct*);<sup>4</sup>
  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;<sup>5</sup> and
  3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
- AND
4. The defendant used<sup>2</sup> 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>
  5. \_\_\_\_\_ (*name of victim*) was a household member of the defendant;<sup>9</sup>
  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 Section 30-3-13 NMSA 1978.
2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of “use,” must also be given.
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 NMRA 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 Section 30-1-12(B) NMSA 1978.
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 a “deadly weapon” which is specifically listed in Section 30-1-12(B) NMSA 1978.

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. S-1-RCR-2023-00030, effective for all cases pending or filed on or after December 31, 2023.]