

14-373. Assault; attempted battery; threat or menacing conduct; a household member@; essential elements.¹

For you to find the defendant guilty of assault against a household member [as charged in Count _____]², 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;

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

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;

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 manner⁴;

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

AND

4. _____ (*name of victim*) was a household member of the defendant⁵;

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 NMSA 1978, Section 30-3-13.

2. Insert the count number if more than one count is charged.

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

4. If the Aunlawfulness@ 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 Alawfulness@ involves self defense or defense of another, see UJI 14-5181 NMRA to UJI 14-5184 NMRA.

5. 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.]