**14-373. Assault; attempted battery; threat or menacing conduct; 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 defendants 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 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.

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.]