

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.¹

For you to find the defendant guilty of aggravated assault on a _____² by use³ of a deadly weapon [as charged in Count _____],⁴ 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 _____;⁵

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.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 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;⁶

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

AND

4. The defendant used³ a [_____]⁷ [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 harm⁸];⁹

5. At the time, _____ (*name of victim*) was a _____² and was performing the duties of a _____^{2,10};

6. The defendant knew _____ (*name of victim*) was a _____;²

7. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTES

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.

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

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

6. 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.

7. 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.

8. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

9. This alternative is given only if the object used is not specifically listed in Section 30-1-12(B) NMSA 1978.

10. “School employee” is defined in Section 30-3-9(A) NMSA 1978. “Sports official” is defined in Section 30-3-9.1(A) NMSA 1978. “Health care worker” is defined in Section 30-3-9.2(A) NMSA 1978. If there is an issue about 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 about 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; 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.]