

14-363. Assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.

For you to find the defendant guilty of aggravated assault on a _____¹ with intent to kill [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 tried to touch or apply force to _____ (*name of victim*) by _____³;
 2. The defendant intended to touch or apply force to _____ (*name of victim*) by _____³;
 3. At the time _____ (*name of victim*) was a _____¹ and was performing the duties of a _____^{1, 5};
 4. The defendant knew _____ (*name of victim*) was a _____¹;
 5. The defendant acted in a rude, insolent or angry manner⁴;
- OR
1. The defendant _____ (*describe unlawful act, threat or menacing conduct*);
 2. At the time, _____ (*name of victim*) was a _____¹ and was performing the duties of a _____^{1, 5};
 3. The defendant knew _____ (*name of victim*) was a _____¹;
 4. 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 manner⁴;
 5. A reasonable person in the same circumstances as _____ (*name of victim*) would have had the same belief;
- AND
6. The defendant intended to kill _____ (*name of victim*);
 7. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTE

1. Insert type of specially protected worker - school employee or health care worker.
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. "School employee" is defined in NMSA 1978, Section 30-3-9(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.

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.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or

after December 31, 2014.]

Committee commentary. — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not specifically require that the defendant be aware that the victim is a specially protected worker, the New Mexico Court of Appeals held that such knowledge is required for health care workers (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially identical to that for health care workers, the Committee believes it is a natural extension to include the knowledge requirement for all such workers.

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