

1     **14-2211. Battery upon a peace officer; essential elements.**

2             For you to find the defendant guilty of a battery upon a peace officer [as charged in  
3     Count \_\_\_\_\_]<sup>1</sup>, the state must prove to your satisfaction beyond a reasonable doubt each  
4     of the following elements of the crime:

5             1.     The defendant intentionally [~~and unlawfully~~]<sup>2</sup> touched or applied force to  
6     \_\_\_\_\_ (name of peace officer) by \_\_\_\_\_ [<sup>3</sup>]<sup>2</sup>;

7             [2.] The defendant's act was unlawful;<sup>3</sup>

8             [2:]3. At the time, \_\_\_\_\_ (name of peace officer) was a  
9     peace officer and was performing the duties of a peace officer<sup>5</sup>;

10            [3:]4. The defendant knew \_\_\_\_\_ (name of peace officer) was  
11    a peace officer<sup>4</sup>;

12            [4:]5. The defendant's conduct caused  
13    [an actual injury to \_\_\_\_\_ (name of peace officer)]<sup>5</sup>;

14            [or]<sup>4</sup>

15            [an actual threat to the safety of \_\_\_\_\_ (name of peace  
16    officer)];

17            [or]<sup>4</sup>

18            [a meaningful challenge to the authority of \_\_\_\_\_ (name of  
19    peace officer)];

20            [5:]6. The defendant acted in a rude, insolent, or angry manner;

21            [6:]7. This happened in New Mexico on or about the \_\_\_\_\_ day of

1 \_\_\_\_\_, \_\_\_\_\_.

2 USE [NOTE] NOTES

3 1. Insert the count number if more than one count is charged.

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

5 3. ~~[The bracketed language is given if an issue is raised as to the lawfulness of~~  
6 ~~the battery. In *State v. Padilla*, 1996-NMSC-072, 122 N.M. 92, 920 P.2d 1046~~  
7 ~~[1997-NMSC-022, 123 N.M. 216, 937 P.2d 492], the Supreme Court held that to satisfy the~~  
8 ~~Section 30-22-24 NMSA 1978 requirement that the act be "unlawful" the state must prove~~  
9 ~~"injury or conduct that threatens an officer's safety or meaningfully challenges his or her~~  
10 ~~authority." If any other issue of lawfulness is raised, add unlawfulness as an element as~~  
11 ~~provided by Use Note 1 of UJI 14-132 NMRA.] In addition to the harm component of~~  
12 ~~Element 5, the underlying battery must also be "unlawful." If the unlawfulness of the act is~~  
13 ~~at issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA.~~

14 ~~In addition, UJI 14-132 is given. If the issue of "lawfulness" involves self-defense or defense~~  
15 ~~of another, see UJI 14-5181 to UJI 14-5184 NMRA. [~~*See also State v. Jones*,~~~~  
16 ~~2000-NMCA-047, ¶ 1, 129 N.M. 165, 3 P.3d 142, cert. denied, 129 N.M. 207, 4 P.3d 35.]~~

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

18 ~~\_\_\_\_\_ 4. Use only applicable alternative or alternatives.]~~

19 ~~[5:]4. "Peace officer" is defined in [~~Subsection C of~~] NMSA 1978, Section~~  
20 ~~30-1-12(C) [~~NMSA 1978~~]. If there is an issue as to whether or not the victim was a peace~~  
21 ~~officer, give UJI 14-2216 NMRA, which defines "peace officer." If there is an issue as to~~

1 whether the officer was within the lawful discharge of the officer’s duties, an instruction may  
2 need to be drafted. The mistake of fact referred to in prior UJI 14-2216 [~~NMRA~~] has been  
3 incorporated into this instruction as an element. If some other mistake of fact is raised as a  
4 defense, see UJI 14-5120 NMRA.

5 5. Use only applicable alternative or alternatives.

6 [Adopted, effective October 1, 1976; UJI Criminal Rule 22.10 NMSA 1978; UJI 14-2211  
7 SCRA; as amended, effective January 15, 1998; November 1, 2001; as amended by Supreme  
8 Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court  
9 Order No. 19-8300-016, effective for all cases pending or filed on or after December 31,  
10 2019.]

11 **Committee commentary.** — See NMSA 1978, § 30-22-24 (1971). See  
12 commentaries to UJI 14-320 NMRA, UJI 14-2201 NMRA, UJI 14-2202 NMRA, and UJI  
13 14-2203 NMRA.

14 In State v. Padilla, 1997-NMSC-022, ¶¶ 2, 11, 123 N.M. 216, 937 P.2d 492, the  
15 Supreme Court held that to satisfy the Section 30-22-24 requirement that the act be  
16 “unlawful” the state must prove “injury or conduct that threatens an officer’s safety or  
17 meaningfully challenges his or her authority.” See also State v. Jones, 2000-NMCA-047, ¶¶  
18 1, 129 N.M. 165, 3 P.3d 142 (although sufficient for conviction under the factual  
19 circumstances, whether spitting on an officer constitutes a “meaningful challenge to  
20 authority” in a particular case is a jury question). The separate “unlawfulness” requirement  
21 may be placed in issue under a justification defense or evidence implicating the scenarios

1 discussed in UJI 14-132 NMRA. See, e.g., State v. Padilla, 1983-NMCA-096, ¶ 15, 101  
2 N.M. 78, 678 P.2d 706 (“In New Mexico, simple battery is a lesser included offense of peace  
3 officer battery; defendant is entitled to an instruction on simple battery if the evidence raises  
4 a factual issue of whether the peace officer used excessive force so as to take him out of the  
5 scope of his lawful duties.” (citing State v. Gonzales, 1982-NMCA-043, ¶¶ 9-11, 97 N.M.  
6 607, 642 P.2d 210 (recognizing the right of self defense against a peace officer using  
7 excessive force, thus negating the lawful discharge of the officer’s duties))), rev’d on other  
8 grounds, 1984-NMSC-026, 101 N.M. 58, 678 P.2d 686.

9       The committee believed that it would be seldom, if ever, that a person would be  
10 charged with the crime of assisting in assault on a peace officer during a riot or unlawful  
11 assemblage pursuant to NMSA 1978, § 30-22-26 (1971) and, therefore, provided no  
12 instruction for the latter offense. [~~In almost every conceivable situation, the state will~~  
13 ~~probably want to proceed under NMSA 1978, § 30-22-24 (1971), charging one who assists~~  
14 ~~in the battery upon a peace officer as an accessory. See NMSA 1978, § 30-1-13 (1972).]~~

15       This instruction was amended in 2010 [~~to be consistent~~] by adding a subjective  
16 knowledge element in accordance with *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207  
17 P.3d 1119.

18 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as  
19 amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed  
20 on or after December 31, 2019.]