

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2019-015**

March 4, 2019

The UJI-Criminal Committee has recommended amendments to UJI 14-2211 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 3, 2019, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

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

For you to find the defendant guilty of a battery upon a peace officer [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intentionally [~~and unlawfully~~]² touched or applied force to _____ (name of peace officer) by _____ [³]²;
- [2.]3. The defendant's act was unlawful;³
- [2:]3. At the time, _____ (name of peace officer) was a peace officer and was performing the duties of a peace officer⁵;
- [3:]4. The defendant knew _____ (name of peace officer) was a peace officer⁴;
- [4:]5. The defendant's conduct caused [an actual injury to _____ (name of peace officer)]⁵;
[or]⁴
[an actual threat to the safety of _____ (name of peace officer)];
[or]⁴
[a meaningful challenge to the authority of _____ (name of peace officer)];

- [5-]6. The defendant acted in a rude, insolent, or angry manner;
 [6-]7. This happened in New Mexico on or about the _____ day of _____, _____.

USE [NOTE] NOTES

1. Insert the count number if more than one count is charged.
 2. Use ordinary language to describe the touching or application of force.
 3. ~~[The bracketed language is given if an issue is raised as to the lawfulness of the battery. In *State v. Padilla*, 1996-NMSC-072, 122 N.M. 92, 920 P.2d 1046 [1997-NMSC-022, 123 N.M. 216, 937 P.2d 492], the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be "unlawful" the state must prove "injury or conduct that threatens an officer's safety or meaningfully challenges his or her authority." If any other issue of lawfulness is raised, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA.] In addition to the harm component of Element 5, the underlying battery must also be "unlawful." 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 to UJI 14-5184 NMRA. [See also *State v. Jones*, 2000-NMCA-047, ¶ 1, 129 N.M. 165, 3 P.3d 142, cert. denied, 129 N.M. 207, 4 P.3d 35-]~~

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

~~4. Use only applicable alternative or alternatives.]~~

[5-]4. "Peace officer" is defined in ~~[Subsection C of]~~ NMSA 1978, Section 30-1-12(C) [NMSA 1978]. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines "peace officer." If there is an issue as to whether the officer was within the lawful discharge of the officer's duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 [NMRA] has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

5. Use only applicable alternative or alternatives.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.10 NMSA 1978; UJI 14-2211 SCRA; as amended, effective January 15, 1998; November 1, 2001; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court Order No. _____, effective _____.]

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

In *State v. Padilla*, 1997-NMSC-022, ¶¶ 2, 11, 123 N.M. 216, 937 P.2d 492, the Supreme Court held that to satisfy the Section 30-22-24 requirement that the act be "unlawful" the state must prove "injury or conduct that threatens an officer's safety or meaningfully challenges his or her authority." See also *State v. Jones*, 2000-NMCA-047, ¶ 1, 129 N.M. 165, 3 P.3d 142 (although sufficient for conviction under the factual circumstances, whether spitting on an officer constitutes a "meaningful challenge to authority" in a particular case is a jury question). The separate "unlawfulness" requirement may be placed in issue under a justification defense or evidence implicating the scenarios discussed in UJI 14-132 NMRA. See, e.g., *State v. Padilla*, 1983-NMCA-096, ¶ 15, 101 N.M. 78, 678 P.2d 706 ("In New Mexico, simple battery is a lesser included offense of peace officer battery; defendant is entitled to an instruction on simple battery if

the evidence raises a factual issue of whether the peace officer used excessive force so as to take him out of the scope of his lawful duties.” (citing *State v. Gonzales*, 1982-NMCA-043, ¶¶ 9-11, 97 N.M. 607, 642 P.2d 210 (recognizing the right of self defense against a peace officer using excessive force, thus negating the lawful discharge of the officer’s duties))), *rev’d on other grounds*, 1984-NMSC-026, 101 N.M. 58, 678 P.2d 686.

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

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

[As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court Order No. _____, effective _____.]