

### **11.115 Definition Of Aggravated Battery -- Based On Use Of A Firearm**

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[2] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[3] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[4] discharges a firearm and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] discharges a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[6] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[8] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

### **Committee Note**

#### ***Instruction and Committee Note Approved April 13, 2016***

720 ILCS 5/12-3.05(e) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.115 when the defendant is charged under 720 ILCS 5/12-3.05(e).

Give Instruction 11.116.

When applicable, give Instruction 11.23A defining “firearm”.

When applicable, give Instruction 11.115A defining “machine gun”.

When applicable, give Instruction 4.26 defining “correctional institution employee”.

When applicable, give Instruction 4.30 defining “emergency medical technician”.

When applicable, give Instruction 4.31 defining “utility worker”.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist.1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.