

**11.15.**

**Definition Of Aggravated Battery--While Armed, Hooded, Or Involving Specific Categories Of Victims**

A person commits the offense of aggravated battery when he [(intentionally) (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] in doing so, he uses a deadly weapon other than by the discharge of a firearm.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing, so, he knows the individual harmed is a teacher or other person employed in any school and such teacher or other employee is on the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual harmed is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is on the grounds of the park or grounds adjacent thereto, or in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual harmed to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid and such caseworker, investigator, or other person is

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other person resides or is located.

[or]

[6] in doing so, he knows the individual harmed is a

[a] [(peace officer) (correctional institution employee) (fireman)] [(who at the time is engaged in the execution of) (and he harms that [(officer) (fireman)] to prevent the [(officer) (fireman)] from performing) (and he harms that [(officer) (fireman)] in retaliation for performing)] official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he harms that person to prevent the peace officer from performing) (and he harms that person in retaliation for that person helping the peace officer perform)] official duties.

[or]

[7] in doing so, he knows the individual harmed is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time is engaged in the performance of his) (and he harms that individual to prevent the individual from performing) (and he harms that individual in retaliation for that individual performing)] official duties.

[or]

[8a] in doing so, he is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] at the time he does so, the other person is on or about [(a public way) (public

property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] in doing so, he knows the individual harmed is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual harmed is [(then performing in such capacity) (then using such public transportation as a passenger) (using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] the other person is an individual of 60 years of age or older.

[or]

[11] in doing so, he knows the individual harmed is pregnant.

[or]

[12] in doing so, he knows the individual harmed to be a judge whom he intended to harm as a result of the judge's performance of his official duties as a judge.

[or]

[13] in doing so, he knows the individual harmed to be an employee of the Illinois Department of Children and Family Services who at the time was engaged in the performance of his authorized duties.

[or]

[14] in doing so, he knows the individual harmed to be a person who is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[15] in doing so, he knowingly and without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft. A merchant is an owner or operator of any retail mercantile establishment or any

agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.

### Committee Note

720 ILCS 5/124(b) (West 1992) (formerly Ill.Rev.Stat. ch. §12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993; P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

#### Give Instruction 11.16.

In *People v. Hale*, 77 Ill.2d 114, 395 N.E.2d 929, 32 Ill.Dec. 548 (1979), the Illinois Supreme Court held that a charge of aggravated battery can rest upon either of the two methods of committing a battery (i.e., causing bodily harm or making physical contact of an insulting or provoking nature) when the offense is aggravated because of the identity of the victim. 720 ILCS 5/12-4(b)(3) through (12). The supreme court did not specifically address what conduct must be proved when the offense is aggravated by the fact that the defendant used a deadly weapon or was hooded, robed, or masked. 720 ILCS 5/12-4(b)(1) and (2). However, the wording of the statute would appear to mandate the same result as that reached in *Hale* for such charges, and this instruction has, therefore, been drafted to allow either alternative to be used for any of the aggravating factors. Use the alternative that conforms to the allegation in the charge. *See People v. Lutz*, 73 Ill.2d 204, 383 N.E.2d 171, 22 Ill.Dec. 695 (1978).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Section 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. *See* 720 ILCS 5/26.5 (West Supp. 1993).

The Committee would caution that the specific wording of the provision regarding batteries committed upon persons over 60 years of age (Section 12-4(b)(10), paragraph [10] in this instruction), differs from that employed in any of the other provisions. Although no court has yet addressed the issue, the Committee believes that when paragraph [10] is used, the alternative involving contact of an insulting or provoking nature should not be used.

Also regarding batteries committed upon persons over 60 years of age (paragraph [10] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older in order to be convicted of aggravated battery under Section 12-4(b)(10). *See People v. White*, 241 Ill.App.3d 291, 302, 608 N.E.2d 1220, 1229, 181 Ill.Dec. 746, 755 (2d Dist. 1993).

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 1961. *See People v. Worsham*, 26 Ill.App.3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The definition of aggravated battery under Section 12-4(b) has grown over the last several years due to the inclusion by the legislature of additional designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the

allegedly criminal behavior occurred.

Use applicable paragraphs, subparagraphs, and bracketed material.

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