**8.2 Assault on Federal Officer or Employee [With a Deadly or Dangerous**

**Weapon] [Which Inflicts Bodily Injury] (18 U.S.C. § 111(b))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with assault on a federal officer in violation of Section 111(b) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant forcibly assaulted [*name of federal officer or employee*];

Second, the defendant did so while [*name of federal officer or employee*] was engaged in, or on account of [his] [her] official duties; and

Third, the defendant [used a deadly or dangerous weapon] [inflicted bodily injury].

There is a forcible assault when one person intentionally strikes another, or willfully attempts to inflict injury on another, or intentionally threatens another coupled with an apparent ability to inflict injury on another which causes a reasonable apprehension of immediate bodily harm.

[A [*specify weapon*] is a deadly or dangerous weapon if it is used in a way that is capable of causing death or serious bodily injury.]

**Comment**

*See* 18 U.S.C. § 1114 for the definition of federal officer or employee referenced in 18 U.S.C. § 111.

The statutory language states that the crime can be committed by one who “forcibly assaults, resists, opposes, impedes, intimidates or interferes,” but the Ninth Circuit has held that regardless of the circumstances, “convictions under [111(a)] require at least some form of assault.” *United States v. Chapman*, 528 F.3d 1215, 1221 (9th Cir. 2008).

There is no requirement that an assailant be aware that the victim is a federal officer. *United States v. Feola*, 420 U.S. 671, 684 (1975); *see also United States v. Mobley*, 803 F.3d 1105, 1109 (9th Cir. 2015) (citing *Feola* and holding that defendant’s lack of knowledge as to victim’s status as federal officer was “irrelevant to establishing the wrongfulness of the defendant’s conduct” in prosecution for assault of federal officer). If the defendant denies knowledge that the person assaulted was a federal officer and claims to have acted in self-defense, Instruction 8.3 (Assault on Federal Officer or Employee—Defenses) should be used.

A reasonable apprehension of immediate bodily harm is determined with reference to a reasonable person aware of the circumstances known to the victim, not with reference to all circumstances, including circumstances unknown to the victim. *United States v. Acosta-Sierra*, 690 F.3d 1111, 1121 (9th Cir. 2012).

Violation of § 111 is a general intent crime in this circuit. *United States v. Jim*, 865 F.2d 211, 215 (9th Cir. 1989). Among other things, this means that voluntary intoxication is not a defense, *id.*, and that § 111(b) does not require an intent to cause the bodily injury. *United States v. Garcia-Camacho*, 122 F.3d 1265, 1269 (9th Cir. 1997).

For an instruction defining “official duties,” *see United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (upholding “official duties” instruction providing that: “the test” for determining whether officer is “[e]ngaged in the performance of official duties” is “whether the officer is acting within the scope of his employment, that is, whether the officer’s actions fall within his agency’s overall mission, in contrast to engaging in a personal frolic of his own”); *see also United States v. Juvenile Female*, 566 F.3d 943, 950 (9th Cir. 2009) (describing official duties test as “whether [the officer] is acting within the scope of what he is employed to do, as distinguished from engaging in a personal frolic of his own”).

*Revised Apr. 2019*