Helpful phone numbers, email addresses and websites:

PEF Health & Safety: 800-342-4306 x254
Statewide Nurses Committee: Nancy Wolff, 800-342-4306 x227
or email: Nwolff@pef.org
PEF Membership Benefits: 800-342-4306 x243
Accident Reporting System: 888-800-0029
PEF Regional Offices (to contact Field Reps) at:
www.pef.org/pef-regional-offices/

To request a State Police report, fax the request to 518-869-3812, or by mail to:

New York State Police
Central Records Bureau
1220 Washington Avenue, Bldg 22
Albany, New York 12226-2252

Download a pdf request form at:
www.troopers.ny.gov/Request_Government_Records/Freedom_of_Information_Requests/FOIL_FORM_V3.pdf

Produced jointly by PEF Health & Safety Department and the Statewide Nurses Committee

NEW YORK STATE
Public Employees Federation, AFL-CIO
1168-70 Troy-Schenectady Road
Albany, New York 12212-2414

For further information regarding the RN felony law, visit the PEF website at www.pef.org/nurse-felony-law/

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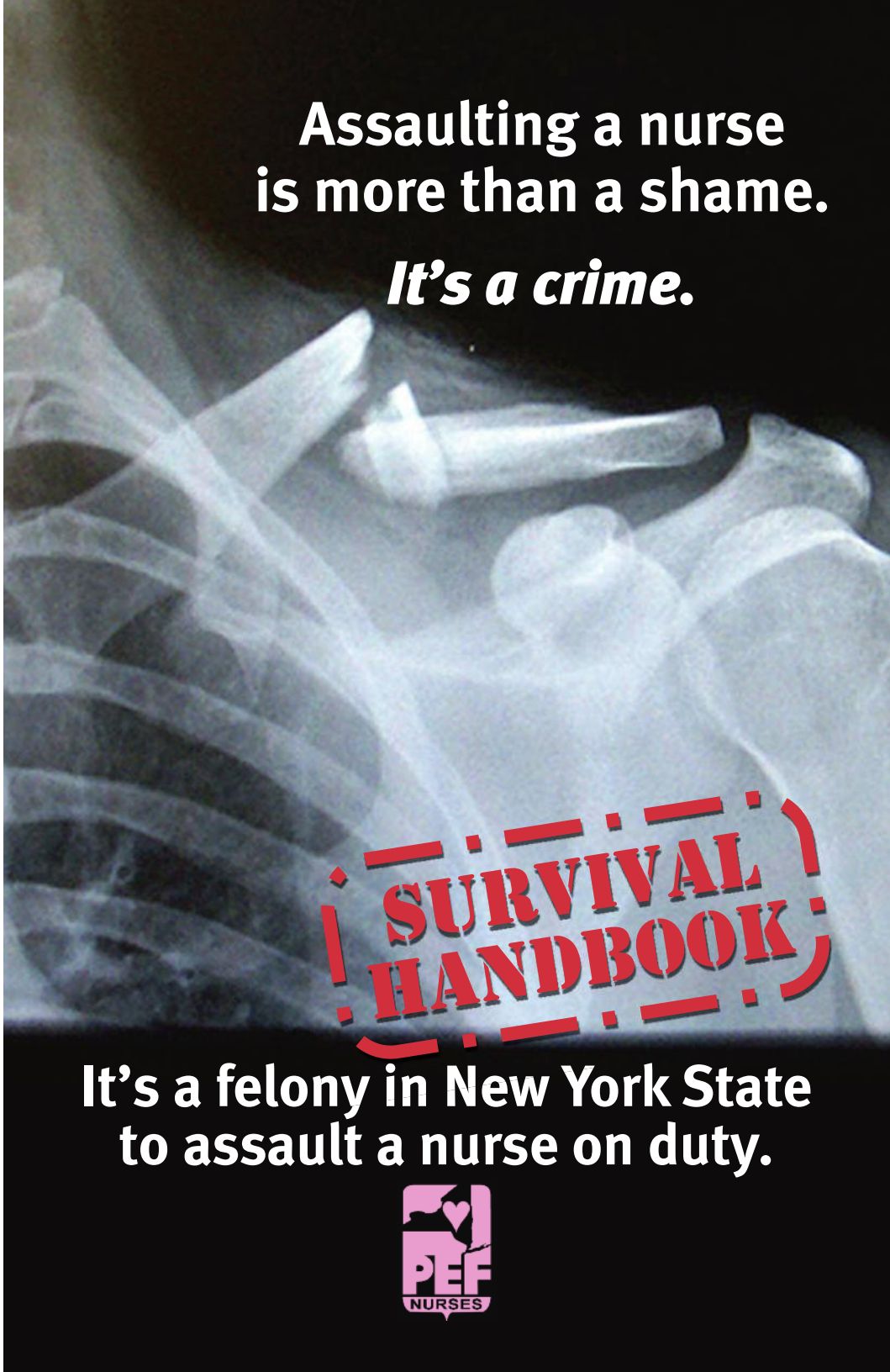
Scan for the latest PEF Health & Safety news

This booklet designed by PEF Public Relations Department



SURVIVAL HANDBOOK

PEF Nurses: Take steps to protect your rights!

What was the legislative change?

A coalition of unions and advocates for nurses, including PEF, was successful in getting the legislature and governor to amend subdivisions 3 and 11 of section 120.05 of the Penal Law by adding Registered Nurses and Licensed Practical Nurses to the listed occupations. As a result of this change, cases that were previously charged as Assault 3rd degree misdemeanors should now all be charged as Class D felonies, which may carry a sentence of 2⅓ to 7 years in prison. All cases must be evaluated on an individual basis by the criminal justice authorities. This change applies only in cases tried as felony assaults in adult court.

What is the language in the penal law?

§ 120.05 Assault in the second degree.

Sections 3 and 11 added RN's and LPN's to the listed occupations. Section 11 specifically states, in part:

> ***"With intent to cause physical injury to a . . . registered nurse or licensed practical nurse he or she causes physical injury to such . . . registered nurse or licensed practical nurse . . . while such employee is performing an assigned duty."***

What should PEF nurses do when they are assaulted?

1. Your safety should be the first priority. Then, if you are able, assist in safeguarding your co-workers and patients.

2. Once safety has been restored, follow your agency's procedures for reporting the assault. This includes filling out an incident/accident report form and/or a workplace violence report form, and calling the Accident Reporting System at 888-800-0029. Let your union steward/leader know, as well, so that they can offer assistance. All assaults should be reported and recorded. If you don't report it, it did not happen!

3. In facilities that have trauma response or critical incident management programs, strongly consider accepting services that could provide assistance and support. The severity of the assault and long-term medical and psychological impact may not be immediately obvious.

4. Your employer is required to provide immediate medical care and first aid. If more than first aid is required, you should go to the emergency room for treatment. Be sure to let the emergency room know that you experienced a work-related assault and that the treatment should be billed to workers' compensation. There are additional rights and benefits under the Civil Service Law and the PEF contract for members who are assaulted on the job. It is very important to see your own physician if you are disabled from work. Make sure they provide care under workers' compensation. If they do not, you will have to seek an alternate provider.

5. If exposure to another person's blood or other potentially infectious material occurs, post-exposure protocols of the OSHA/PESH Blooodborne Pathogens Standard must be implemented by the employer. This includes the provision of a post- exposure medical evaluation and counseling, documentation of routes of exposure, identification of source individual, and providing a copy of the BBP standard and

information about the exposure to the healthcare provider. The medical evaluation is urgent because when provision of HIV prophylactic drugs is indicated, they should be provided within 2 hours and no less than 36 hours after the exposure.

6. Keep copies of all records, bills, and documentation.

7. Contact your PEF division council leader or staff field representative to obtain assistance from the union and to ensure all benefits and rights are protected.

8. PEF has a program called "Navigator" to help members navigate the workers' compensation system. Ask your division council leader or field representative for this assistance.

9. If you are experiencing psychological trauma, you should consider seeking the services of a qualified psychologist who accepts workers' compensation, is an expert in treating trauma, and will see a new patient. It is required by the workers' compensation system that you first obtain a written referral from a physician. Without the referral, your benefits may be cut off and your provider's diagnosis, treatment, and determination regarding degree of disability will not be recognized.

How do I obtain ATAC insurance benefits?

1. Only PEF members are eligible. Fee payers are not eligible.

2. The program is administered by PEF Membership Benefits Program.

3. The criteria for eligibility are:
   a. attendance records showing the member was off duty for five days due to the assault;
   b. a doctor's statement that the member was out of work and under their care for at least five days due to the work-related assault, and,
   c. a copy of a police report documenting that the member filed charges.

4. An ATAC claim packet with detailed information is available upon request from PEF Membership Benefits Program by calling 800-342-4306 x243.

5. Benefits depend on the type of claim that is filed and range from $1000 to $10,000 for permanent total disability.

How do I interact with the criminal justice authorities?

1. OMH, OPWDD, OCFS, and DOCCS have policies requiring the reporting of crimes to the criminal justice authorities. However, it has been PEF's experience that individual facilities often deviate from these requirements.

2. As soon as is practical, members should file a police report. Find out whether local or state police have jurisdiction of criminal activity that occurs in your facility. DOCCS is particularly good at assisting members in filing charges against inmates who assault them. However, in other agencies members are well advised to file the police report directly with the appropriate police agency.

3. PEF encourages assaulted nurses to have a loved one, union representative, or other trusted person with them while filing the report. Police agencies are sometimes insensitive and officials are often reluctant to prosecute patients in state facilities. However, you have a right as a citizen of the state to bring charges against your assailant. ***Violence is NOT part of the job!***

4. Most police agencies readily provide a copy of the police report upon request. However, the state police require a written request for the reports. It can be obtained by faxing the request to 518-869-3812 or by mail to:
   New York State Police
   Central Records Bureau
   1220 Washington Avenue, Bldg 22
   Albany, New York 12226-2252

Download a pdf request form at:
www.troopers.ny.gov/Request_Government_Records/Freedom_of_Information_Requests/FOIL_FORM_V3.pdf

5. Contact the District Attorney's office to establish a rapport with the Assistant District Attorney assigned to your case. In some cases, your PEF division/council has already established a relationship with the DA's office and can assist you in this regard. If your division doesn't have a relationship with the DA, they should contact their regional coordinator for assistance. The DA's office should keep you apprised of the status of your criminal case and seek your assistance in identifying witnesses and other information relevant to the prosecution of the case.

6. Bring a copy of the Nurse Felony Law with you when you interact with the police and other authorities. ***Do NOT assume that they are aware of the law. The law is on pages 8-11 of this handbook.***

Should patients who are mentally ill or otherwise disabled be prosecuted?

1. Most patients with mental illness or other disabilities are no more prone to violence than the general population. However, de-institutionalization has led to a shift in the inpatient populations to include the most difficult to manage patients who have a higher frequency of involvement in the criminal justice system, a history of violence, drug and alcohol abuse, and other risk factors for being targets of or perpetrators of violence.

2. Mental illness or other disability is not a free pass for violence. Each assault case must be evaluated on a case-by-case basis. The courts are empowered under the criminal procedure laws to hold patients for "periods of observation" if there is a question about their capacity to defend themselves or understand the crimes they are accused of committing. The court may take such action at any time after arraignment on a felony complaint and before being held for action by a grand jury. Criminal justice authorities should not dismiss cases routinely, just because they involve an assailant with mental illness or other disabilities.

3. Under other criminal procedure law requirements, patients may be referred to a forensic hospital for treatment until they recover enough to stand trial. There are other provisions that allow the courts to find a patient "not guilty by reason of insanity", which results in placement in a secure forensic psychiatric hospital.

What qualifies as a felony assault?

The police and the District Attorney's office will decide whether an assault is "harassment" or a felony assault by evaluating the type and degree of injury resulting from the attack. Typically, a felony charge is filed when an assault results in hospitalization and significant injuries such as broken bones. A simple broken nose may not always result in a felony charge. However, a complex broken nose may result in a felony charge. You may call the District Attorney's office to discuss the charges and it is always recommended that you provide evidence such as medical reports to help the prosecutors.

An ounce of prevention?

The employer should work with union representatives and assaulted members to assess whether measures can be instituted to prevent assaults. Each incident presents a learning opportunity and lessons learned should be considered and feasible corrective measures instituted. Each PEF represented facility is required to have a written workplace violence prevention program that details how these assessments will be conducted. These written programs are available from the employer upon request.

§ 120.05 Assault in the second degree.

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or

2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or

3. With intent to prevent a peace officer, a police officer, **registered nurse, licensed practical nurse,** sanitation enforcement agent, a firefighter, including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter, an emergency medical service paramedic or emergency medical service technician, or medical or related personnel in a hospital emergency department, a city marshal, a traffic enforcement officer or traffic enforcement agent, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, **registered nurse, licensed practical nurse,** sanitation enforcement agent, firefighter, paramedic, technician, city marshal, traffic enforcement officer or traffic enforcement agent, he or she causes physical injury to such peace officer, police officer, **registered nurse, licensed practical nurse,** sanitation enforcement agent, firefighter, paramedic, technician or medical or related personnel in a hospital emergency department, city marshal, traffic enforcement officer or traffic enforcement agent; or

4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or

6. In the course of and in furtherance of the commission or attempted commission of a felony, other than a felony defined in article one hundred thirty which requires corroboration for conviction, or of immediate flight therefrom, he, or another participant if there be any, causes physical injury to a person other than one of the participants; or

7. Having been charged with or convicted of a crime and while confined in a correctional facility, as defined in subdivision three of section forty of the correction law, pursuant to such charge or conviction, with intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person; or

9. Being eighteen years old or more and with intent to cause physical injury to a person less than seven years old, the defendant causes such injury to such person; or

10. Acting at a place the person knows, or reasonably should know, is on school grounds and with intent to cause physical injury, he or she:
   (a) causes such injury to an employee of a school or public school district; or
   (b) not being a student of such school or public school district, causes physical injury to another, and such other person is a student of such school who is attending or present for educational purposes. For purposes of this subdivision the term "school grounds"

Assault in the Second Degree Law

shall have the meaning set forth in subdivision fourteen of section 220.00 of this chapter.

11. With intent to cause physical injury to a train operator, ticket inspector, conductor, signalperson, bus operator or station agent employed by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions, a city marshal, a traffic enforcement officer, traffic enforcement agent or sanitation enforcement agent, **registered nurse or licensed practical nurse** he or she causes physical injury to such train operator, ticket inspector, conductor, signalperson, bus operator or station agent, city marshal, traffic enforcement officer, traffic enforcement agent, **registered nurse or licensed practical nurse** or sanitation enforcement agent, while such employee is performing an assigned duty on, or directly related to, the operation of a train or bus, or such city marshal, traffic enforcement officer, traffic enforcement agent, **registered nurse or licensed practical nurse** or sanitation enforcement agent is performing an assigned duty.

12. With intent to cause physical injury to a person who is sixty-five years of age or older, he or she causes such injury to such person, and the actor is more than ten years younger than such person.

Assault in the second degree is a Class D Felony.

Victim_____

Date of Attack _____ Time of Attack_____

Attacker(s) _____

Location _____

Witnesses _____

Details _____

Nurse receives justice at attacker's landmark sentencing

A CHANGED LIFE — Judy Rychcik and Mike Rychcik (Judy's husband) responds to questions from reporters at a press conference in Albany after the sentencing of her attacker.

Story and photo by DEBORAH A. MILES

A landmark sentencing took place November 4 because of the courage of a nurse, the Violence Against Nurses Law and the cooperation of Albany's district attorney.

Judy Rychcik, a PEF nurse, pressed charges against her attacker under the Violence Against Nurses Law which went into effect in New York in November 2010. Under the law, an attack on a nurse is a Class D felony, just as with other protected groups such as police officers, firefighters and emergency responders.

Terry James, the man who assaulted her at the Capital District Psychiatric Center (CDPC) March 13, 2011, stood with his back to the courtroom where supporters of Rychcik came to hear the ruling. Albany County Court Judge Dan Lamont sentenced James to five years in state prison and another five under parole supervision.

The sentence came after Rychcik's husband, Mike, told the judge how the assault on his wife made his knees buckle when he saw her in the hospital, strapped to a backboard with a pool of blood by her head. The blow James delivered to her face caused Rychcik to fall, exposing her skull. She sustained injuries to her neck, head, jaw and brain.

"He could have killed her. Because of this person's actions, my wife Judy may never be in a position to help or even save someone's life. He not only has taken away a part of my wife's life, but a part of mine and of our two children," Mike Rychcik said.

At a press conference following the sentencing, a nervous yet courageous Rychcik told reporters changes need to be made.

The day the attack took place, Rychcik was responding to an intervention code at CDPC's Crisis Unit.

"The attack may have been prevented if a security guard had been posted. And nurses need to be alerted to words or actions that can trigger a patient to go off. There should not be staff cutbacks, especially when dealing with people who have mental health conditions," Rychcik said.

PEF President Ken Brynien said tragedies, such as the one Rychcik suffered, have been going on for a long time. He said managers of facilities have discouraged injured workers from filing reports. And the U.S. Department of Justice reported 5,000 nurses each year become victims of violent crimes in the workplace.

"If this attack took place two years ago, we would not be here today," Brynien said. "This new law states it is a felony to attack a nurse while on-duty and was designed to help protect our nurses. PEF was aggressive in getting this law passed. It will go a long way in helping to protect our nurses when patients realize there will be consequences for their actions. The sentencing of Mr. James today is very significant."

Albany's District Attorney David Soares told reporters, "For decades, nurses and others serving the needs of their patients have had to endure brutal acts of violence in the workplace. For some inexplicable reason, the criminal justice response and the response of facilities has been to blame the victim or to suggest they had to assume the risk associated with their employment.

"Years ago, the Office of the Albany County District Attorney engaged with PEF and developed a strategy designed to hold accountable offenders, and also to let our practitioners know we support them. And now we have a law we can work with to complement our efforts. The case of Mr. James reflects the results of our collective efforts," Soares said.

Rychcik said the sentencing of James and the support of PEF is helping to bring closure to the attack. She misses being a nurse, and doesn't know if she will be able to return to her profession. And, she encourages other nurses to stand behind the law to help stop the assaults.

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