

What are the facts?

In 2009, The Emergency Nurses Association conducted, the Emergency Department Violence Surveillance Study. The results of this showed:

- “Physical violence and verbal abuse rates were fairly high”>
- “Between 64%-87% of the nurses assaulted did not file a report”.
- “When physical violence was experienced, 44% of the nurses assaulted reported that no action was taken against the assailants, and only 23% of the assailants were given a warning”.
- “When physical violence was experience, 74.4% of the hospital’s administration gave no response when asked about the violent incident”.
- “Male nurses experience a higher incidence of violence than female nurses”.
- “Hospitals with higher perceived safety ratings by nurses had lower rates of physical violence and verbal abuse”.
- “A higher commitment to violence mitigation from hospital administrations and ED management and the presence of reporting policies (especially zero-tolerance policies), were associated with a lower occurrences of physical violence and verbal abuse”.
- “Nurses, whose hospital administration and ED management who were committed to workplace violence control, were less likely to experience workplace violence”.

(<http://www.ena.org/IENR/Documents/ENAEDVSRReportAugust2010.pdf>, 8-9.

The change in the NYS law

After many years of nurses advocating for change, on August 13, 2010, with the approval of the Governor, and the legislature, subdivisions 3 and 11 of section 120.05 of the Penal Law was amended by adding Registered Nurses and Licensed Practical Nurses to the occupations protected under the law. Cases that were previously charged as misdemeanors will now be charged as Class D felonies, which carry a sentence of 2 1/3 to 7 years in prison. All cases will be evaluated, and applies only to those tried in adult court.

What does the law state?

§ 120.05 Assault in the second degree.

By adding RN’s and LPN’s to the listed occupations, the law now 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.”

Will my assault qualify as a felony?

Not every assault is a felony. The District Attorney's office will decide whether the incident warrants a felony assault or harassment by evaluating the degree of injuries resulting from an attack. A felony charge is filed when an assault results in hospitalization and significant injuries such as broken bones.

What should you do if you are assaulted?

- Safety is your first priority! Safeguard your co-workers and patients, then the workplace second.
- Seek medical evaluation and documentation. The severity of the assault and long-term medical and psychological impact may not be immediately obvious to you or your superiors or the administration of your agency. Documentation will only help later.
- You are entitled to immediate medical care and first aid by your employer. If more than first aid is required, you should seek medical attention at the nearest emergency room. Treatment should be billed to workers’ compensation; it is a work-related injury. It is very important to follow up with your own physician. Make sure they can provide care under workers’ compensation. If not, you will have to seek another provider.
- If exposure to another person’s blood or other potentially infectious material has occurred, post-exposure protocols (OSHA/PESH Blood borne Pathogens Standard) are required and must be implemented by the employer or the emergency room. Make sure to provide information about the routes of exposure, and identification of the source individual so that appropriate medical treatment can be completed. A copy of the BBP standard and information about the exposure should be provided to the healthcare worker. When treatment includes the provision of HIV prophylactic drugs, they should be provided within 2 hours (and no less than 36 hours after the exposure).
- Follow your agency’s procedures in reporting the incident. Notify your supervisor and/or manager, and your local law enforcement. Follow your hospital’s policies to document the assault. We recommend that all assaults should be reported and recorded. Nothing can be done if not reported. **If you don’t report it, it did not happen!**
- Contact your supervisor and Employee Health division to obtain assistance from them and to ensure all benefits and rights are protected as required by the workers’ compensation system.
- You should consider seeking the services of a qualified psychologist who is an expert in treating psychological trauma. Usually, a referral is needed from your physician by the workers’ compensation system. Your benefits may not cover the treatment without it. Your physician’s diagnosis, treatment, and their evaluation of the degree of disability may not be recognized. **Your health and well-being are important.**
- Keep copies of all records, bills, and other documentation. We suggest you initiate a journal of the events. Take notes. Document all contacts, dates, and a small synopsis of the contact conversation. These may be needed in the future.
- Call the District Attorney’s office to discuss the charges. It is always recommended that you provide evidence such as medical reports to help. Offer any assistance
- If difficulties arise you may need to consider contacting a lawyer for advice.

Your Role with the Criminal Justice Authorities

- If your facility has a policy for reporting the incidents... follow it. Sometimes individual facilities do not properly report incidents of violence to local law enforcement officials.
- Often supervisors or even your facility may put pressure on you not to press charges. Seek support from your local nursing professional organization and/or district attorney’s office.
- **You** must file a police report as soon as possible. Find out which police agency has jurisdiction over the criminal activity that occurs in your facility.
- It may be helpful to have a loved one, or other trusted person with you while filing the report.
- Sometimes police agencies may be insensitive and officials have been reluctant to prosecute patients. Do not be intimidated if you wish to press charges. **Violence or any assault is NOT part of the job!**
- When you interact with the police and other authorities, **do NOT assume that they are aware of the law.** Bring a copy of the Nurse Felony Law with you.
- You are entitled to a copy of the report. Most police agencies will readily provide a copy of the report upon your request. However, the state police require a written request for a report. It can be obtained by faxing a 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
- Contact the DA’s office. They should keep you apprised of the status of your criminal case and may seek your assistance in identifying witnesses and other information relevant to the prosecution of the case.
- Consider seeking private legal advice if necessary.

Should the mentally ill or disabled be prosecuted?

- The closure of many psych facilities throughout the state has led to the deinstitutionalization of patients and a shift to outpatient care. This makes treatment difficult for those populations that include the most difficult to manage, such as those who have been involved in the criminal justice system, those with a history of violence, or, with drug and alcohol abuse problems.
- If someone suffers from mental illness, drug/alcohol abuse, or, other disabilities it is not an acceptable excuse for violence. Each case will be evaluated on its own merit. **Criminal cases should not simply be dismissed by the criminal justice authorities due to an assailant’s illness or disabilities.**
- The courts may also refer the assailant to a forensic hospital for treatment until they are able to stand trial. The courts may find a patient “not guilty by reason of insanity”, which results in their placement in a secured forensic psychiatric hospital.

Prevention is the Key

Nurses are less likely to experience workplace violence in facilities where hospital administration and ED management are committed to active prevention programs. Cooperation between you and your employer is necessary for a safe work environment.

- Post incident evaluation is crucial. Work with your employer and those assaulted to assess the events that have occurred
- After the event has been evaluated, feasible corrective measures should be instituted to help prevent assaults and provide employee safety
- Provide nurses with specific training to help them develop a stronger skill set for recognizing potentially violent patients and events before any acts of violence may take place. With training the nurse can de-escalate acts of violence and maintain a safer work environment for themselves and their patients.
- Hospitals can be compliant with OSHA's recommendations and provide their staff with a safer work place if staff are provided the necessary ongoing training and with the establishment of zero-tolerance policies.

Remember, it is a JACHO initiative for a safe work environment (Sentinel Alert Issue #45), and, is also stipulated by 2006 NYS Public Employer Workplace Violence Prevention Law. *Every* facility is required to have a written workplace violence prevention program that details how these assessments will be conducted. These programs and plans should be available from the employer upon the request of any employee. You can refer to the ENA Violence Tool Kit to assist you in developing one.

Emergency Nurses Association.

915 Lee Street, Des Plaines, IL 60016-6569

800-900-9659

<http://www.ena.org/IENR/Pages/WorkplaceViolence.aspx>

References:

ENA, Emergency Department Violence Surveillance Study 2010,

July/August 2009 issue of *The Journal of Nursing Administration*

ENA IENR, Emergency Nurses Association Headquarters

915 Lee Street Des Plaines, IL 60016-6569, 800-900-9659

NYS PEF Nurses- Violence Against Nurses Survival Handbook,

NYS PEF Albany, NY 12212-2414,

NYSNA Violence Healthcare Resource Guide

NYSNA, 120 Wall Street, 23rd Floor

New York, NY 10005, 888.551.3112

U.S. Department of Labor, Occupational Safety & Health Administration

200 Constitution Avenue, Washington, D.C. 20210,

<http://www.osha.gov/Publications/OSHA3148/osha3148.html>

NYS Department of Labor, Division of Safety and Health

NYS Department of Labor, Building 12, W.A. Harriman Campus,

Albany, NY 12240, (888) 4-NYSDOL

[http://www.labor.state.ny.us/workerprotection/safetyhealth/PDFs/](http://www.labor.state.ny.us/workerprotection/safetyhealth/PDFs/Workplace%20Violence%20FlyerNov3.pdf)

[Workplace%20Violence%20FlyerNov3.pdf](http://www.labor.state.ny.us/workerprotection/safetyhealth/PDFs/Workplace%20Violence%20FlyerNov3.pdf)

NYS Department of Criminal Justice Service,

Alfred E. Smith Building

80 South Swan St. Albany, New York 12210

Things to remember:

- 1.) Exposure to violence is not part of your job.**
- 2.) There should be a Zero-Tolerance for violence against nurses**
- 3.) Know your rights and the law.**
- 4.) Safety First. Seek first aid if necessary.**
- 5.) Contact your supervisor, follow hospital policy.**
- 6.) Call local law enforcement. Make it clear that you want a report made; ask where you can get a copy of it.**
- 7.) Contact your local District Attorney's office; inform them you want to be advised with respect to your case. Offer assistance in the matter.**
- 8.) Keep a journal of the events, Keep copies of all reports and contact numbers, record dates and times of conversations and who you spoke to regarding your case.**
- 9.) Seek advice from a lawyer as necessary.**



**NYSCENA
PO Box 23451
Rochester NY 14692
www.nysena.org
585-775-9088**

This pamphlet is presented to you by NYSCENA as a resource tool for use in your everyday practice with regards to workplace violence.

Sponsored by Lower Hudson NYS ENA Chapter

ZERO TOLERANCE:

**Assault of a Nurse on Duty is
a
FELONY**

**A Resource for
Emergency Nurses.**

