

■ What is the “Felony Assault Law”?

New York State Penal Code §120.05 Assault in the Second Degree allows felony charges, instead of misdemeanor charges, to be brought against someone who acts, “with intent to cause physical injury to a... registered nurse or licensed practical nurse...while such employee is performing an assigned duty.” In addition the penal code states that the person committing the assault must be acting with the intention of stopping the nurse from performing her/his job.

■ What constitutes a physical injury under New York State law?

Physical injury is legally defined as “impairment of physical condition or substantial pain.” Under this definition, not every “assault” is considered a felony. However, if a workplace violence attack against a nurse results in physical impairment or substantial pain, felony charges can be brought. If the attack does not reach this level of injury, misdemeanor or harassment charges can be brought against the assailant.

■ What do I do if hospital security personnel or the police are saying my assault does not constitute a felony?

Security and the police are not always aware of the inclusion of nurses in NYS Penal Code §120.05(3). If necessary, refer security personnel or police officers to NYS Penal Code §120.05(3). Your employer cannot keep you from filing a police report. If either security or the police are not being cooperative regarding your complaint, contact your NYSNA representative or NYSNA Health & Safety at healthandsafety@nysna.org.

■ Can charges be brought against an assailant who is diagnosed with a mental illness?

Each case must be considered on its own merits. It is not up to security, the police, or anyone but the courts to determine if or how the mental health of the defendant affects the case.

What should I do if I’m assaulted on the job?

1. **Seek medical care immediately.** Notify the medical provider of the level of pain you are experiencing.
2. **File a police report.**
3. **Fill out your facility’s incident report form and file a protest of assignment form (POA).**
4. **Notify your NYSNA representative** so that the union can offer support and advocate for safety measures to be put in place to prevent future assaults.
5. **File for workers’ compensation** to cover medical expenses and partial wage replacement (including reinstatement of some of your used sick time) related to the injuries sustained as a result of the assault.
6. **Document everything related to the assault** including conditions that may have led to the assault, the names of witnesses, statements made by the assailant, managers, security personnel and co-workers.

Filing criminal charges against an assailant is your right and your choice. While NYSNA is here to support you after an assault, it is the union’s goal to prevent assaults. Many changes can be made to the work environment to decrease the risk of violence. NYSNA’s Health & Safety staff are available to conduct on-site inspections and make recommendations for safer working conditions.