



New York State
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April 11, 2011

Joseph D'Amico, Superintendent
New York State Police
1220 Washington Avenue
Building 22
Albany, NY 12226-2252

Dear Superintendent D'Amico:

I am writing to request your assistance in getting the word out to all Troopers about the newly enacted "Violence Against Nurses" law. This law went into effect on November 1, 2010. The law amended subdivisions 3 and 11 of section 120.05 of the Penal Law (attached) by adding Registered Nurses and Licensed Practical Nurses to the listed occupations.

It is my understanding that cases that were previously charged as Assault 3rd degree misdemeanors should now all be charged as D felonies, which may carry a sentence of 2 and 1/3 to 7 years in prison. We realize that all cases must be evaluated on a case by case basis.

In advocating for nurses who have been assaulted while performing their lawful duties in state facilities, we have learned that many District Attorneys, police, and trooper are not familiar with the new law. This has resulted in some errors and inconsistencies in police reports and criminal charges. The NYS Police Chiefs Association has created a podcast on this topic that can be found at: http://www.nychiefs.org/apb_podcast.php
NOTE: Podcast is at the bottom of the page.

We appreciate the work of the state's Police Departments and their important role in community safety. Thank you in advance for getting this information out to the Troopers.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth Brynien". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kenneth Brynien
President

cc: Pat Baker, PEF Vice-President
Jonathan Rosen, Director, Occupational Safety & Health Department

§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" 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.