

SCHOOL BUS DRIVERS : PENAL LAW PROVISIONS

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The New York courts have held that a school bus company acts “*in loco parentis*” (in the place of the parent) and must exercise that degree of care that a parent would reasonably provide to children on the bus. At the same time the law places the responsibility for the safety of the child on the bus operator, the law also imposes limitations on how the authority can and should be exercised. The restrictions are contained in New York’s Penal Law.

“Disorderly Conduct.” A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm or recklessly creating a risk, he engages in fighting or in violent or threatening behavior or, in a public place, uses abusive or obscene language or makes an obscene gesture. The section concludes with a “catch all” provision. A person is guilty of disorderly conduct if he creates a “hazardous or physically offensive” condition that serves no legitimate purpose.. The sentence for a Class B misdemeanor may include imprisonment, which shall not exceed three months and/or a fine or probation.

“Harassment in the Second Degree.” This section is violated if a person strikes, shoves, kicks or otherwise subjects another person to physical conduct or threatens to do the same.

The disorderly conduct and harassment provisions are usually applied in situations in which a person comes into contact with another individual in a belligerent or threatening manner.

“Assault in the Third Degree.” A person is guilty of assault in the third degree if he causes physical injury to another person, recklessly causes physical injury to another person or, with criminal negligence, causes physical injury by means of a deadly weapon or a dangerous instrument. The requirement that there be physical injury is not a difficult requirement to meet. Physical injury is statutorily defined as “impairment of physical condition or substantial pain.” Impairment of physical condition can be caused by a mark on the body. Also note that the alternative to impairment of physical condition is substantial pain. This is a subjective determination. It is not a difficult requirement to meet.

You should also know that the use of the term “dangerous instrument” contained in the statute does not mean what one generally thinks of as a dangerous instrument, such as a gun or a knife. A dangerous instrument can include such everyday items as a pen, a book, a set of keys, a shoe, a car or any other item that is used in a threatening or provocative way.

“Assault in the Second Degree.” A person is guilty of this assault when, with intent to cause serious physical injury to another person, he causes such injury. Assault in the third degree only requires physical injury while assault in the second degree

requires serious physical injury. Serious physical injury means physical injuries which create a substantial risk of death or which cause death or serious protracted disfigurement, protracted impairment of health or protracted loss or impairment of function of any bodily organ.

Despite the rigid definition of “serious physical injury,” the courts have lowered the standard. Courts have held that physical injuries required to support a conviction of assault in the second degree may be as little as lacerations, cuts and bruises that required medical attention.

“Assault in the first degree.” is caused by intentionally causing serious physical injury with a deadly weapon or a dangerous instrument.

“Aggravated Assault upon a person less than 11 years old.” Is designed to punish as a felon any adult who engages in successive misdemeanor assaults upon a child with a three year period. Thus, when the adult commits assault in the third degree upon a child and has previously been convicted of assault in the third degree upon a child within the proceeding three years, that adult is guilty of the crime of aggravated assault upon a person less than 11 years old.

“Sexual abuse” deals with sexual contact. The definition of “sexual contact” has three parts. First, the term includes touching of the “intimate parts of a person”. Several courts have held that a person’s “buttocks” are an intimate part. Second, any such touching must be “for the purpose of gratifying sexual desire of either party.” There is no requirement that actual gratification occurs, but only that the touching is for that purpose. An inadvertent touching is not “sexual contact.” Third, the definition includes either “the touching of the actor by the victim as well as the touching of the victim by the actor whether directly or through clothing.” A person is guilty of sexual abuse in the third degree (Penal Law §130.55) when he or she subjects another person to sexual contact without the latter’s consent.

Section 130.60 is entitled “Sexual Abuse in the Second Degree.” A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact when that person is incapable of consent by reason of some factor other than being less than 17 years old (mental or physical incapacity) or is less than 14 years of age.

Finally, “sexual abuse in the first degree” is contained in §130.65. A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact by forcible compulsion or when the other person is incapable of consent by reason of being physically helpless or is less than 11 years old.