

FORCIBLE TOUCHING
(Bus, Train, Subway)
Penal Law § 130.52 (2)
(Committed on or after November 1, 2015)

The (specify) count is Forcible Touching.

Under our law, a person is guilty of Forcible Touching when he or she intentionally, and for no legitimate purpose, subjects another person to sexual contact for the purpose of gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is a passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions.

Under our law, it is also an element of this offense that the sexual act was committed without consent.¹ Forcible touching takes place without a person's consent when it results from any circumstances in which a person does not expressly or impliedly acquiesce to the actor's conduct.²

The following terms used in that definition have a special meaning:

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person³, including squeezing, grabbing

¹ Penal Law § 130.05 (1).

² Penal Law § 130.05 (2)(c). Lack of consent can also result from forcible compulsion or incapacity to consent. See Penal Law § 130.05(2). For definition of forcible compulsion, see Penal Law § 130.00(8). For definition of incapacity to consent, see Penal Law § 130.05 (3).

³ See *People v Sene*, 66 AD3d 427, 427-428 (1st Dept 2009) ("We conclude that, under general societal norms, the neck qualifies as an intimate part because it is sufficiently personal or private that it would not be touched in the absence of a close relationship between the parties. Moreover, since 'intimacy is a function of behavior and not merely anatomy,' the manner and circumstances of the touching should also be considered, and we reject defendant's argument that to do so would conflate the sexual gratification element with the issue of whether a body part is an intimate part. Here, defendant stripped naked, climbed onto the sleeping victim, and licked her neck. This conduct clearly fell within 'the plain, natural meaning' of the statute" [internal citations omitted].)

or pinching,⁴ for the purpose of gratifying the sexual desire of the defendant.⁵ It includes the touching of the actor by the victim as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.⁶

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY subjects another person to sexual contact for the purpose of gratifying the actor's sexual desire and acts with intent to degrade or abuse such other person when that person's conscious objective or purpose is to do so.⁷

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant (defendant's name), subjected (complainant's name) to sexual contact for the purpose of gratifying defendant's sexual desire and with intent to degrade or abuse (complainant's name) while (complainant's name) was a passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions;

⁴ Here, the words "including squeezing, grabbing or pinching" have been inserted into the statutory definition for sexual contact because the forcible touching statute concludes, "For the purposes of this section, forcible touching includes squeezing, grabbing or pinching." This language appears more germane to subdivision one, in which the prohibited act is "forcibly touches," and in the recommended instruction for subdivision one, "squeezing, grabbing [and] pinching" have been included in the definition of "forcibly touching." Here, where the prohibited conduct is subjecting another to any sexual contact, the added language may be more illustrative than definitional, but the language plainly applies to both subdivisions.

⁵ At this point the definition states "of either party"; however, the definition of the crime requires that "of the defendant" be substituted.

⁶ Penal Law § 130.00(3).

⁷ Penal Law § 15.05(1).

2. That the defendant did so intentionally and for no legitimate purpose; and
1. That the defendant did so without the consent of (complainant's name) in that he/she did not expressly or impliedly acquiesce to the defendant's conduct.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.