

JURISDICTION:
General Reference:

NEW YORK
McKinney's Consolidated Laws of New York Note: Most Citations are to the Vehicle and Traffic Law (V&T Law) New York Code of Rules and Regulations (NYCRR)

Required Use of Safety Belts¹:

Requirements:

- I. A person, when transporting a child <16 years old in the back seat of a motor vehicle², shall secure such child in a safety belt. V&T Law §1229-c(1)
 - II. A person, when transporting a person <16 years old in the front seat of a motor vehicle², shall secure such person in a safety belt. V&T Law §1229-c(2)
 - III. When a motor vehicle² is in operation, the driver and all front seat passengers ≥16 years old shall be secured in a safety belt. V&T Law §1229-c(3)
- V&T Law §1229-c has been held neither (1) to exceed the State's constitutional police powers nor (2) to violate a person's constitutional rights of either privacy or equal protection of the laws. *Wells v. State*, 495 N.Y.S.2d 591 (Sup. 1985) (affirmed, 521 N.Y.S.2d 604 (A.D. 4 Dept. 1987))

Sanctions for Failure to Use or
Require the Use of Safety Belts:

- I. Civil Fine: A person, who violates III above, is subject to a fine of not more **\$50**.³ V&T Law §1229-c(5)

Required Use of Safety Belts: (continued)

Sanctions for Failure to Use or
Require the Use of Safety Belts: (continued)

- II. Civil Fine: A person, who violates either I or II above, is subject to a fine of not less than **\$25** nor more than **\$100**. V&T Law §1229-c(5) In addition, a person is assessed 3 points against their driving record. 15

¹**Exemptions.** The requirements to use a safety belt do not apply in the following circumstances: (1) To persons who for physical or medical conditions cannot use a safety belt; and, (2) to rural letter carriers of the U.S. Postal Service while performing official duties. V&T Law §1229-c(7) & (10)

Standing Prohibited on Certain Motor Vehicles. I. When the number of passenger is greater than the number of seats available, it is unlawful to operate a camp or charter omnibus for a distance ≥10 miles with any passenger standing. V&T Law §1229-b(1) II. When transporting either students <21 years old, teachers or supervisory personnel, it is unlawful to operate a school bus either to or from a school or on school activities while any passengers are standing. Until June 30, 2004, there are certain exceptions to this requirement based upon the seating capacity of the school bus being operated. V&T Law §1229-b(2) & Education Law §3635-c III. It is a traffic infraction to violated these requirements. The following sanctions may be imposed: For a 1st offense, a fine of not more than \$100 and/or jail for not more than 15 days; for a 2nd offense (within 18 months), a fine of not more than \$200 and /or jail for not more than 45 days; and, for a 3rd or subsequent offense (within 18 months), a fine of not more than \$300 and/or jail for not more than 90 days. V&T Law §1800(a) & (b) The law does not appear to assess points against a driver's license record for a violation of these requirements.

²The term "motor vehicle" does not include a bus, a school bus (except when carrying children <4 years old), an authorized emergency vehicle, a taxi or liveries. V&T Law §1229-c(4), (9) & (11) The term does not include motor vehicles that do not have to be equipped with safety belts under V&T Law §383(1). V&T Law §1229-c(4) In brief, under V&T Law §383(1), only motor vehicles manufactured after June 30, 1964 and designated as model year 1965 or later must be equipped with seat belts.

School Buses. The Vehicle and Traffic Law requires that school buses sold in the State be equipped with seat belts. V&T Law §383(5) In addition, the Education Law provides that a board of education or board of trustees may via regulations provide that safety belts be installed on the school buses under its jurisdiction. Education Law §3635-a Although, the Vehicle and Traffic Law does not require the use of safety belts by persons riding in a school bus, the Education Law provides that a board of education or board of trustees, again, may via regulations provide that on school buses under its jurisdiction safety belts be used when such vehicles are in operation. Education Law §3635-a

³The law is not clear as to whether points can be assigned to a person's driving record for a violation of this requirement. The law provides that 2 points are assigned for a traffic law violation where no specific point value has been assigned for the offense. This would appear to be the case here. However, points cannot be assigned where the violation did "not result from the operation of a motor vehicle." As the law does not clearly provide whether this offense results from vehicle operation, it is uncertain whether points can be assigned for its violation. 15 NYCRR 131.3(a) & (b)(7)(vii) and *People v. Erdman*, 546 N.Y.S.2d 775 (Just. Ct. 1989)

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NYCRR 131.3(b)(6)(vi)

Effect on Civil Liability:

Evidence of non-compliance with these requirements shall not be admissible in any civil action with respect to liability but may be introduced as to the mitigation of damages. However, the party introducing such evidence must plead non-compliance as an affirmative defense.⁴ V&T Law §1229-c(8) This statute was applied in *Stein v. Penatello*, 587 N.Y.S.2d 37 (A.D. 2 Dept. 1992), and *Davis v. Bradford*, 642 N.Y.S.2d 48 (A.D. 2 Dept. 1996).

Required Use of Child Safety Restraint Systems⁵:

Requirements:

- I. A person, when transporting a child <4 years old in the back seat of a motor vehicle², shall secure such child in a Federally approved child restraint system. V&T Law §1229-c(1) & *Thorel v. Varghese*, 621 N.Y.S.2d 633 (A.D. 2 Dept. 1995) (applying law only to drivers)
- II. A person, when transporting a child <4 years old in the front seat of a motor vehicle², shall secure such child in a Federally approved child restraint system. V&T Law §1229-c(2)
- III. Persons transporting children <4 years old in a **school bus** shall secure such children in a Federally approved child restraint system that is detachable or removable. V&T Law §1229-c(11)

Sanctions for Failure to Require the Use of Child Restraint Systems:

Civil Fine: A person who violates any of the above requirements is subject to a fine of not less than **\$25** nor more than **\$100**. V&T Law §1229-c(5) In addition, a person is assessed 3 points against their driving record. 15 NYCRR 131.3(b)(6)(vi)

Effect on Civil Liability:

Evidence of non-compliance with these requirements shall not be admissible in any civil action with respect to liability but may be introduced as to the mitigation of damages. However, the party introducing such evidence must plead non-compliance as an affirmative defense. V&T Law §1229-c(8)

⁴Rear seat passengers, who fail to use a safety belt, can have any damage award for injuries resulting from an automobile accident reduced on the grounds that they failed to mitigate damages. *Spier v. Barker*, 323 N.E.2d 164 (N.Y. 1974), and *Diehl v. Ogorewac*, 836 F.Supp. 88 (E.D. N.Y. 1993)

⁵**Exemptions.** These requirements do not apply to children who for physical or medical conditions cannot use a child restraint system. V&T Law §1229-c(7)

Required Use of Motorcycle Protective Headgear⁶:

Requirements:	Any person who operates or rides on a motorcycle ⁷ shall wear a Stateapproved protective helmet. ⁸ V&T Law §381(6)
Sanctions for Failure to Use:	Imprisonment for not more than 30 days and/or a fine of not more than \$100 . ³ V&T Law §381(13)

Required Use of Motorcycle Eye Protection Device:

Requirements:	Any person who operates a motorcycle ⁷ shall wear State approved goggles or a face shield. V&T Law §381(7)
Sanctions for Failure to Use:	Imprisonment for not more than 30 days and/or a fine of not more than \$100 . ³ V&T Law §381(13)

Required Use of Bicycle Protective Headgear⁹:

⁶Local law enforcement authorities may exempt a person from this requirement when they are participating in an authorized parade or other public exhibition. V&T Law §381(6)

⁷The term “motorcycle” is defined as “[e]very motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.” V&T Law §123 Via judicial interpretation of this provision, this term includes “minibikes.” *Dean v. Holland*, 350 N.Y.S.2d 859 (Sup.Ct. 1973), and *Tyler v. Traveler’s Ins., Co.*, 442 N.Y.S.2d 746 (Sup.Ct. 1981)

⁸There is authority, at the trial court level, that indicates that the failure to wear protective headgear might be a factor that can be used to reduce a damage award in favor of motorcycle operators or passengers who have sustained injuries in a traffic accident. *Dean v. Holland*, 350 N.Y.S.2d 859 (Sup. 1973), and *Penzell v. State*, 466 N.Y.S.2d 562 (Ct.Cl. 1983)

⁹**Other Requirements.** I. A person is prohibited from transporting a child <1 year old on a bicycle. This prohibition includes carrying such a child in a pack fastened to the operator. There are no sanctions for a 1st violation of this prohibition. However, for a 2nd violations, an offender is subject to a civil fine of not more than **\$50**. See Footnote No. 10. V&T Law §1238(1) II. No person ≥1 but <14 years old shall

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Requirements:

I. A person <14 years old who operates a bicycle shall wear a helmet approved by the Commissioner of Motor Vehicles.¹⁰ V&T Law §1238(2-a) and (5)(a) & (b) and General Business Law §391-m(1)(a)

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II. No bicycle operator shall allow a person ≥5 but <14 years old to ride on a bicycle unless they are wearing a helmet approved by the Commissioner of Motor Vehicles.¹⁰ V&T Law §1238(2-a) and (5)(a) & (b) and General Business Law §391-m(1)(a)

Note: The above requirements do not apply where a county, city, town or village has enacted a local law or ordinance similar to such law. V&T Law §1238(9)

Required Use of Bicycle Protective Headgear:
(continued)

Requirements: (continued)

III. A person is prohibited from transporting a child ≥1 but <5 years old on a bicycle unless such child is (1) wearing a helmet approved by the Commissioner of Motor Vehicles and (2) is placed in a separate seat which is attached to the bicycle.¹⁰ V&T Law §1238(2)(a) & (b) and (2-a) and General Business Law §391-m(1)(a)

ride on in-line skates unless they are wearing a State approved helmet. There is a civil fine of not more than **\$50** for a violation of this provision. See Footnote No. 10. V&T Law §1238(5-a) & (6)(a) **Comment:** Given the language in V&T §1238(5-a) & (6), the fine sanction appears to apply to the individual who is riding on the in-line skates regardless of their age.

¹⁰Failure to comply with these requirements shall not constitute contributory negligence or assumption of risk and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person. In addition, such a failure shall not diminish or reduce the damages recoverable in any action. V&T Law §1238(7)

Sanctions for Failure to Use: Civil Fine: A fine of not more than **\$50**.¹¹ V&T Law §1238(3) & (6)(a)

Required Use of Bicycle Eye Protection Device:

Requirements: **None**

Sanctions for Failure to Use:

Prohibition Against Riding in Unsecured Portion of Vehicle:

Requirements: I. An auto truck (i.e., a pickup truck) cannot be operated >5 miles if more than one-third of the vehicles passengers are standing.¹² V&T Law §1222(1)
 II. An operator (or an owner) of an auto truck (i.e., pickup truck) shall not allow such vehicle to be driven >5 miles while there are >5 persons in the bed of such vehicle who are <18 years old. Important. This requirement does not apply if a person >18 years old is riding in the bed of the vehicle with these persons. V&T Law §1222(2)

Sanctions for a Violation: Traffic Infraction: 1st offense-An imprisonment term of not more than **15 days** and/or a fine of not more than **\$100**.³ 2nd offense (within 18 months)-An imprisonment term of not more than **45 days** and/or a fine of not more than **\$200**.³ 3rd or subsequent offense (within 18 months)-An imprisonment term of not more than **90 days** and/or a fine of not more than **\$300**.³ V&T Law §1800(a) & (b)

Exemptions: I. The requirement of I above does not apply to persons or corporations operating an agency or agencies for public service. V&T Law §1222(1)
 II. The requirement in II above does not apply if there is at least one person >18 years old in the body of the truck. V&T Law §1222(2)

¹¹If the violation of the person <14 years old occurs in the presence of that person's parents or guardian where such parent or guardian is ≥18 years old, the summons for the offense is issued only to the parent or guardian. V&T Law §1238(8)

¹²This requirement does not apply if the truck (1) has suitable seats that are attached to the vehicle's body, (2) has side racks of a least three feet in height above the vehicle's floor and (3) has tail board or gate which is securely closed. V&T Law §1222(1)