

GENERAL ORDER

SEXUAL ACTIVITY IN PUBLIC PLACES

1.0 PURPOSE

To establish guidelines clarifying the duties and responsibilities of members of the State Police to respond appropriately to alleged violations involving consensual sexual activity between adults in public places.

2.0 DEFINITIONS

2.1 SEXUAL CONDUCT – The exposure or touching of the genitals, buttocks, or female breasts for purposes of sexual arousal, gratification or offense, or public solicitation to engage in such conduct in a public place. Sexual conduct does not include socializing and expressions of affection absent the particularized conduct described in this subsection.

2.2 PUBLIC PLACE – A place where the person engaging in sexual conduct knows or reasonably should know that there is a substantial risk that his or her sexual conduct will be observed by a casual passerby. Sexual conduct does not occur in a “public place” simply because it is observed by another. An area may be open to the public and not be considered a “public place” if a reasonable person would not foresee such a substantial risk.

3.0 POLICY

The Commonwealth of Massachusetts has a legitimate enforcement interest in ensuring that sexual activity and/or genital exposure do not occur in public places, where the likelihood of being observed by a casual passerby is reasonably foreseeable.

Disparate enforcement of applicable statutes against any particular group and disparate treatment of any group is unacceptable.

Officers must pay particular attention to the elements of the various offenses when determining whether to arrest possible offenders for engaging in sexual conduct on public property, such as highway rest areas, parks, and other publicly administered sites. All of the elements of a particular offense must be met in order to charge an individual with an offense.

4.0 CRIMINAL LAWS

Most criminal complaints involving consensual adult sexual conduct on Commonwealth lands generally allege violations of the following statutes:

“Open and Gross Lewdness” (G.L. 272, § 16):

In order to sustain a conviction for “open and gross lewdness”, the Commonwealth must prove five elements:

1. That the defendant exposed his or her genitals to one or more persons;
2. That he or she did so intentionally;
3. That he or she did so “openly”, i.e., with the intent of exposing him or her self, or in reckless disregard or substantial risk of public exposure, to others who might be offended by such conduct;
4. That defendant’s act was done in such a way as to produce alarm or shock; and
5. That one or more persons were in fact alarmed or shocked by defendant’s exposing him or her self. The officer should identify at least one witness, who is not a police officer, to satisfy this requirement.

“Indecent Exposure and Lewd and Lascivious Behavior” (G.L. c. 272, § 53):

A charge of lewd and lascivious behavior requires both:

1. The sexual conduct occur in a “public place”;
That it be by a person who knows or should know of the presence
2. of another person or persons who may be offended by the conduct.

This section also prohibits the:

1. Public solicitation of conduct to be performed in a public place, when;
The conduct committed or solicited involves touching of the
2. genitals, buttocks, or female breasts for the purpose of sexual arousal, gratification, or offense.

“Unnatural Acts” (G.L. c. 272, § 35):

The conduct must:

1. Occur in a “public place”;
2. Involve oral contact with the genital or anal area, anal intercourse or masturbation of another person;
3. Be done intentionally or with reckless disregard that others may observe the conduct and be offended.

5.0 PROCEDURE

5.1 Officers are free to approach and make inquiries to persons in public areas. The approach or inquiry, however, must neither explicitly nor implicitly assert that persons must respond to their inquiries. People cannot be arrested for failing to respond, or on mere suspicion, or for failing to give an account which satisfies the officer, or because of a past offense. Officers should not order someone to leave a public area in the absence of unlawful conduct.

5.2 Reasonable suspicion must accompany an investigatory stop or brief detention.

5.3 Probable cause must accompany an arrest.