

INDECENT EXPOSURE

The defendant is charged with indecent exposure. In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the defendant exposed his (her) (genitals) to one or more persons;**

***Second:* That the defendant did so intentionally; and**

***Third:* That one or more persons were offended by the defendant's thus exposing himself (herself).**

G.L. c. 272, § 53. See Instruction 3.120 (Intent). See also Instruction 7.400 (Open and Gross Lewdness and Lascivious Behavior, G.L. c. 272, § 16); Instruction 7.500 (Unnatural and Lascivious Act, G.L. c. 272, § 35); and Instruction 7.380 (Lewd, Wanton and Lascivious Act, G.L. c. 272, § 35).

NOTE:

1. **Limited to exposure of genitalia.** The misdemeanor of indecent exposure (G.L. c. 272, § 53) is applicable only to exposure of the genitalia, and not to exposure of the genital area, pubic hair, buttocks, or female breasts. *Commonwealth v. Arthur*, 420 Mass. 535, 650 N.E.2d 787 (1995). By contrast, the separate felony offense of open and gross lewdness and lascivious behavior (G.L. c. 272, § 16), includes the intentional exposure of genitalia, buttocks, or female breasts, but has the additional element that it must be done in such a way as to produce actual alarm or shock. See *Commonwealth v. Quinn*, 439 Mass. 492, 789 N.E.2d 138 (2003); *Commonwealth v. Fitta*, 391 Mass. 394, 396, 461 N.E.2d 820, 822 (1984) (unlike open and gross lewdness, the crime of indecent exposure does not require that it be done in such a way as to produce alarm or shock); *Commonwealth v. Broadland*, 315 Mass. 20, 21-22, 51 N.E.2d 961, 962 (1943) (indecent exposure involves "an intentional act of lewd exposure, offensive to one or more persons"); *Commonwealth v. Bishop*, 296 Mass. 459, 462, 6 N.E.2d 369, 370 (1937) (offense need not be in public place or involve exposure to more than one person).