Department of State Police
General Order

Effective Date:	Number:
December 6, 2023	**ADM-46**
Subject:	
Sexual Activity in Public Places	

Policy

The Commonwealth of Massachusetts has a legitimate enforcement interest in ensuring that sexual activity and/or genital exposures 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/or disparate treatment of any group is prohibited.

Definitions

Public Place: For the purposes of this policy only, a place where it is known or reasonably should be known that members of the public may be present and/or may be able to observe activity. An area may be open to the public and not be considered a public place for the purposes of this policy if a reasonable person would not foresee that his/her activity would be seen by a member of the public.

Sexual Conduct: For the purposes of this policy only, 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.

Criminal Laws

Members shall pay particular attention to the elements of the various offenses when making a determination to arrest possible offenders for engaging in sexual conduct on public property (e.g. rest areas, parks).

All of the elements of a particular offense shall be met in order to charge an individual with an offense.

Most criminal complaints involving consensual sexual conduct on Commonwealth lands generally allege violations of the following Massachusetts General Laws (MGL):

Criminal Laws, continued

MGL c. 272, § 16 Open and Gross Lewdness

To sustain a conviction for open and gross lewdness, the Commonwealth must prove five (5) elements:

- That the defendant exposed their genitals, buttocks, or female breasts to one or more persons;
- That they did so intentionally;
- That they did so openly, i.e., with the intent of exposing themselves, or in reckless disregard or substantial risk of public exposure, to others who might be offended by such conduct;
- That defendant's act was done in such a way as to produce alarm or shock; and
- That one or more persons were in fact alarmed or shocked by defendant's exposing themselves. Members should identify at least one witness, who is not a police officer, to satisfy this requirement.

MGL c. 272, § 35 Unnatural Acts

The conduct must:

- Occur in a public place;
- Involve oral contact with the genital or anal area, anal intercourse or masturbation of another person, or any other intrusion of a part of one person's body or some other object into the genital or anal opening of another persons' body; and
- Be done intentionally or with reckless disregard that others may observe the conduct and be offended.

MGL c. 272, § 53 Indecent Exposure and Lewd and Lascivious Behavior

A charge of lewd and lascivious behavior requires both:

- The sexual conduct must occur in a public place; and
- That it be by a person who knows or should know of the presence of another person or persons who may be offended by the conduct.

This section also prohibits the:

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

Procedure

Members are free to approach and make inquiries to persons in public areas. The approach or inquiry, however, shall neither explicitly nor implicitly assert that persons must respond to their inquiries.

Persons cannot be arrested:

- For failing to respond;
- On mere suspicion;

Procedure, continued

- For failing to give an account which satisfies the member; or
- Because of a past offense.

Members shall not order someone to leave a public area in the absence of unlawful conduct.

An investigatory stop or brief detention shall be based on reasonable suspicion.

An arrest shall be based on probable cause.

References

MGL c. 272, § 16;
MGL c. 272, § 53;
MGL c. 272, § 35.

Promulgated By: John E. Mawn Jr., Colonel/Superintendent