

PUBLIC INDECENCY

Submitted 9/18/03

Reviewed and approved 9/18/03

DRAFT

RSA 645:1 I (a) Indecent exposure and lewdness (misdemeanor)

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant [fornicated] [exposed his/her genitals] [performed any act of gross lewdness]; and
2. The defendant acted under circumstances which he/she should have known
would likely cause affront or alarm; and
3. The defendant acted knowingly.¹

These are the elements of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Knowingly” means [see definition of knowingly]

¹ State v Bergen 141 N.H. 61 (1996)

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RSA 645:1 I (b) Indecent exposure and lewdness [misdemeanor]

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was at least 13 years of age and less than 16 years of age; and
3. The defendant acted purposely.

These are the element of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genial or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely.]

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RSA 645:1 II (a) Indecent exposure and lewdness [class b felony]

DRAFT
[Child age 12 years old or under]

The defendant is charged with the crime of indecent exposure and lewdness. The definition of this offense has three parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was 12 years of age or younger; and
3. The defendant acted purposely.

These are the elements of the crime of indecent exposure and lewdness. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genital or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

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RSA 645:1 II (b) Indecent exposure and lewdness [class b felony]

DRAFT
[subsequent offense]

The defendant is charged with the crime of indecent exposure and lewdness, subsequent offense. The definition of this crime has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was at least 13 years of age and less than 16 years of age; and
3. The defendant acted purposely; and
4. The defendant was previously convicted of [an offense under 645:1 (b)] [an offense which includes the same conduct, as is prohibited under 645:1 (b)].

These are the elements of the crime of indecent exposure and lewdness, subsequent offense. Certain words in the definition need to be further defined.

“ Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genial or anal openings of the actor’s body; or

- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

DRAFT

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RSA 645:1 III (a) Indecent exposure and lewdness [class a felony]

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The defendant is charged with the crime of indecent exposure and lewdness, subsequent offense. The definition of this crime has four parts or elements. The state must prove each element beyond a reasonable doubt. Thus, the state must prove that:

1. The defendant performed an act of [sexual penetration] [sexual contact] on [himself] [herself] [another]; and
2. The defendant performed such act in the presence of a child who at the time was [at least 13 years of age and less than 16 years of age] [12 years of age or younger]; and
3. The defendant acted purposely; and
4. The defendant was previously convicted at least twice of offenses or a combination of offenses under 645 I (b) or 645 II (a) or offenses which include the same conduct as is prohibited in 645 I (b) or II (a) in another jurisdiction.

These are the elements of the crime of indecent exposure and lewdness, with multiple prior offenses. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing or otherwise, of the victim’s or actor’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

“Sexual penetration” means

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the actor’s body or any object manipulated by the actor into genital or anal openings of the victim’s body; or
- Any intrusion, however, slight, of any part of the victim’s body into genital or anal openings of the actor’s body; or
- Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined above on the actor, on another person, or on [himself] [herself.]

Emission is not required as an element of any form of sexual penetration.

“Purposely” means [see definition of purposely].

DRAFT

RSA 645:2, I (a) Solicitation

The defendant is charged with the crime of prostitution. The definition of this offense has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the state must prove that:

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1. The defendant [solicited], [agreed to perform] or [engage in] [sexual contact] or [penetration]; and
2. The defendant's act occurred in return for consideration; and .
3. The defendant acted knowingly.

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the victim's or the defendant's sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant's body or any object manipulated by the defendant into genital or anal openings of the other person's or the defendant's body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly]

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (b) Prostitution [induce another]

The defendant is charged with the crime of prostitution. The definition of this offense has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant induced or caused another to [agree to perform], [engage in], [solicit], [sexual contact] or [sexual penetration] in return for consideration; and
2. The defendant acted purposely.
- [3. One of the other people involved was under the age of 18.]
- [4. One of the other people involved was compelled by force or intimidation.]”

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (c) Prostitution– [transport]

The defendant is charged with the crime of prostitution. The definition of this offense has [three] [four] [five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant transported another into or within this state; and
2. The defendant acted with the purpose of [soliciting] [agreeing to perform] [engaging in] [sexual contact] [sexual penetration] in return for consideration; and
3. The defendant acted purposely.
- [4. One of the other people involved was under the age of 18.]
- [5. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (d) Prostitution [supported by]

The defendant is charged with the crime of prostitution. The definition of this offense has [three] [four] [five] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant was supported in whole or in part by the proceeds of [solicitation] [agreeing to perform], [engaging in] [sexual contact] or [sexual penetration] in return for consideration; and
2. The defendant was not a legal dependent of the person engaged in such conduct and was incapable of self-support; and
3. The defendant acted knowingly.
- [4. One of the other people involved was under the age of 18.]
- [5. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (e) Prostitution [furnish place]

The defendant is charged with the crime of prostitution. The definition of this offense has [two] [three] [four] parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant permitted a place under [his] [her] control to be used for [soliciting] [agreeing to] [engaging in], [sexual contact] [sexual penetration] in return for consideration; and
2. The defendant acted knowingly.
- [3. One of the other people involved was under the age of 18.]
- [4. One of the other people involved was compelled by force or intimidation.]

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Knowingly” means [see definition of knowingly].

¹ RSA 632-A:1 IV

² RSA 632-A:1 V

RSA 645:2, I (f) Prostitution [pay/offer]

The defendant is charged with the crime of prostitution. The definition of this offense has two parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant [paid] [~~agreed to pay~~] [~~offered to pay~~] another person to engage in [sexual contact] [sexual penetration] with the defendant or with another person; and
2. The defendant acted purposely.

These are elements of the crime of prostitution. Certain words in the definition need to be further defined.

“Sexual contact” means the intentional touching whether directly, through clothing, or otherwise, of the other person or the defendant’s sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.¹

“Sexual penetration” means:

- Sexual intercourse; or
- Cunnilingus; or
- Fellatio; or
- Anal intercourse; or
- Any intrusion, however slight, of any part of the defendant’s body or any object manipulated by the defendant into genital or anal openings of the other person’s or the defendant’s body; or
- Any act which forces, coerces or intimidates the other person to perform any sexual penetration as already defined on the defendant, or on another person, or on himself.

Emission is not required as an element of any form of sexual penetrations.²

“Purposely” means [see definition of purposely.]

¹ RSA 632-A:1 IV

² RSA 632-A:1 V