

**PUBLIC LEWDNESS**  
**(B Misdemeanor)**  
**PENAL LAW 245.00 (a) and (b)(i)**  
**(Committed on or after Sept. 1, 1968)**

The \_\_\_\_\_ count is Public Lewdness.

Under our law, a person is guilty of Public Lewdness when he or she intentionally

Select appropriate alternative(s):

exposes the private or intimate parts of his or her body in a lewd manner

[or]

commits any [other] lewd act<sup>1</sup>

Select appropriate alternative:  
in a public place<sup>2</sup>

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<sup>1</sup> The term, "lewd act" is not defined by statute. See *Matter of Paul R.*, 131 AD2d 764, 765 (2d Dept 1987) ("[T]he complainant's testimony that the appellant was masturbating and making obscene remarks to her daughter in front of a window of his residence in full public view was sufficient to demonstrate conduct proscribed by the phrase 'any other lewd act'"); *People v Darryl M.*, 123 Misc 2d 723, 726 (Crim Ct, NY County 1984) (finding that the defendant's actions of repeatedly stroking his covered erect penis and rubbing it against the buttocks of three females in a subway station "is exactly the kind of behavior which the Legislature intended to encompass by utilizing the phrase 'any other lewd act'", cited with approval in *People v Hatton*, 26 NY3d 364 (2015) (interpreting Penal Law § 130.52).

<sup>2</sup> The term "public place" is not defined in this statute or in Penal Law article 245, and the Court of Appeals has held that the definition of "public place" in Penal Law § 240.00 is inapplicable (see *People v McNamara*, 78 NY2d 626, 630 [1991]). With respect to the interior of a car, *McNamara* held that "the interior of a vehicle parked at a stated address is not itself a 'public place,' but it may become one under circumstances indicating that the car's interior is visible to a member of the passing public, and that the vehicle is situated in a place where it likely would be observed by such a person" *Id.* at 634. This charge incorporates that language when the interior of a car is in

in private premises under circumstances in which he or she may readily be observed from either a public place or from other private premises, and with intent that he or she be so observed.

The term “intent” and the term “intentionally” have their own special meaning in our law. I will now give you the meaning of those terms.

INTENT<sup>3</sup> means conscious objective or purpose. Thus, a person INTENTIONALLY exposes the private or intimate parts of his or her body in a lewd manner [(or) commits any (other) lewd act] [in a public place] [in private premises] when that person's conscious objective or purpose is to do so.

[A person engages in conduct with INTENT that he or she be observed when that person's conscious objective or purpose is to do so].

Add if location is a parked vehicle:

A “public place” may include the interior of a parked vehicle when the vehicle's interior is visible to a member of the passing public and the vehicle is situated in a place where it likely would be observed by such a person.<sup>4</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following [two/four] elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name),

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issue.

<sup>3</sup> Penal Law § 15.05 (1).

<sup>4</sup> See footnote two.

Select appropriate alternative(s):

exposed the private or intimate parts of his/her body  
in a lewd manner

[or]

committed any [other] lewd act

Select appropriate alternative:

in a public place

in private premises; and

2. That the defendant did so intentionally [and<sup>5</sup>]

[3. That the defendant did so under circumstances in which  
he/she may have readily been observed from either a public  
place or from other private premises; and

4. That the defendant did so with intent that he/she be so  
observed.]

Therefore, if you find that the People have proven beyond  
a reasonable doubt (both / each) of those elements, you must find  
the defendant guilty of the crime of Public Lewdness as charged  
in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not  
proven beyond a reasonable doubt (either one or both / any one  
or more) of those elements, you must find the defendant not guilty  
of the crime of Public Lewdness as charged in the \_\_\_\_\_ count.

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<sup>5</sup> Elements three and four are applicable only if the alleged location is  
“in private premises.”