

238.17 INDECENT EXPOSURE. MISDEMEANOR.

The defendant has been charged with indecent exposure.¹

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt.

First, that the defendant willfully exposed [his] [her] private parts.²

Second, that the exposure occurred in a public place,³ that is a place to which the public has access and is visited by many persons.

And Third, that the exposure was in the presence of at least one person (and if this other person was of the same sex, it was in a place not designated for a public purpose where the same sex exposure was incidental to a permitted activity).⁴

NOTE WELL: It is assumed that the legislature intended this (language) to exempt from the scope of the statute exposure in places such as public restrooms.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully exposed [his] [her] private parts in a public place in the presence of at least one person (and if this other person was of the same sex, that this place was not designated for a public purpose where the same sex exposure was incidental to a permitted activity), it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. The statute also punishes aiding, abetting or procuring such an act, as well as the owner, etc. of any premises in which such an act is knowingly hired.

2. The term "private parts" refers to the genital or excretory organs. A female breast is not a private part. *State v. Jones*, 7 N.C. App. 166 (1970). Where there is a dispute as to what was exposed, and one of the things is not a private part, the jury should be instructed as to what is or is not a private part.

N.C.P.I.—CRIMINAL 238.17
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GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2006
N.C. Gen. Stat. § 14-190.9

3. For a further definition of "public place," see *State v. King*, 268 N.C. 711 (1966) (automobile in public parking lot). See also *State v. Fusco*, 136 N.C. App. 268, 523 S.E.2d 741 (1999).

4. The victim need not actually see what is being exposed. *State v. Fly*, 348 N.C. 356 (1998); *State v. Fusco*, 136 N.C. App. 268, 523 S.E.2d 741 (1999).