

	LANE COUNTY SHERIFF'S OFFICE POLICY	Number: G.O. 7.34
		Issue Date: March 21, 2005
		Revision Date: November 2, 2005
CHAPTER: Patrol		Related Policy: G.O. 1.11 (Use of Discretion), G.O. 1.12 (Use of Force), G.O. 7.16 (Guidelines for Avoiding Liability)
SUBJECT: Nudity Ordinance		Related Laws: ORS 163.465, Lane County Ordinance 6.100

POLICY: Employees must act reasonably and within the limits of their authority as defined by statute and judicial interpretation, insuring that the rights of both the individual and society are protected.

RULE: None

PROCEDURE:

I. Elements

A. The elements required to violate Lane County Ordinance 6.100 are:

1. An exposure of genitalia (does not include bare breasts).
2. On public property and not in a tent, motor home, temporary home, or cabin, etc.
3. Exposure to at least one other person.
4. Intent to expose to another.
5. By a person at least eight years old.

II. Enforcement Guidelines

- A. To enforce the Nudity Ordinance in public places, emphasis is on requesting citizen arrest action on the part of the offended party and the issuance of Misdemeanor Citations (in lieu of arrest) whenever possible.
- B. In applying the material elements of this offense, it should appear that the exposure was not merely accidental, but intentional, and ordinary acts or conduct involving exposure of genitalia as the result of carelessness or thoughtlessness do not in themselves establish the offense of indecent exposure. The intent required is general and not specific, and the act must be intentional in the sense that

criminal intent is an essential element of any crime. Intent may, however, be inferred from recklessness. Where all five of the above elements are satisfied, a violation of LC 6.100 has occurred.

- C. Violation of this ordinance is a crime (unless committed by a juvenile) that requires only a general criminal intent. The intent necessary to be proven is only that intent to "expose to another." This differs from the intent required by the State Indecency law, (ORS 163.465(1) (c)), which requires the "intent of arousing the sexual desire of himself or another person."
- D. Ordinance LC 6.100 is Constitutional as it applies to public property. However, it cannot be Constitutionally enforced against persons on public property who are in tents, motor homes, or other temporary home circumstances.
- E. Exposure of genitalia in public unisex showers and rest rooms is prohibited, but special attention must be emphasized because of the intent element. There would not be a violation where the exposure is accidental or otherwise where the participant did not have a justifiable reason to believe other persons would be in the vicinity.
- F. Group arrests should be avoided, as they often lead to civil liability for the Deputy and the Sheriff's Office. Probable cause and all of the elements of the crime must be applied and clearly established for every individual who is arrested. However, this should not be too difficult in determining in a custody situation.

III. Enforcement Procedure

- A. Citizen's Arrest - The present policy for Misdemeanor arrests where the act was not committed in the Deputy's presence should dictate. The Deputy shall request a citizen's arrest by the complainant and/or the offended party. This policy should extend whenever possible, even in situations where the exposure is continuing after the Deputy has arrived.
 - 1. After the citizen's arrest has been effected, the citizen shall be thoroughly advised that they are required to appear at the District Attorney's Office where they will be required to file and sign a formal complaint no later than 9:00 a.m., the workday immediately following the arrest.
 - 2. In addition, citizens shall be advised that failure to appear at the District Attorney's Office shall result in the charges being dismissed. Citizens making arrests may be advised to seek an attorney's advice before filing a formal complaint. However, Deputies should not advise concerning civil or criminal liabilities. This advice shall be documented in the custody report, if a custody report is written.

- B. Citation to Appear - Whenever possible, the Deputy shall issue a Citation to Appear rather than initiating a physical arrest. However, consideration must be given that the arrestee meets the present required criteria for determining whether a citation should be issued, i.e., ties to the community, identification, etc.
- C. Juvenile Arrests - As the elements of an offense as stated by LC 6.100 include exposure " . . . by a person eight years old," obviously there is a possibility that a violator will be a juvenile. In those cases involving juvenile violations, they shall be handled in the routine, appropriately established juvenile proceedings, rather than a criminal law violation, according to established Sheriff's Office policy.
- D. The Lane County District Attorney will prosecute all violations of LC 6.100 in lieu of County Counsel.

IV. Related State Statute

In incidents where an exposure is made on private property to members of the public in a public place, the existing public indecency statute would be sufficient for the prosecution of such an offense under ORS 163.465, and the Lane County District Attorney's Office will not prosecute violations of LC 6.100 as applied to conduct on private property where an expectation of privacy adheres.