

Basic Course Workbook Series



Learning Domain 08

General Criminal Statutes

Version 5.0

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

**Basic Course Workbook Series
Student Materials
Learning Domain 08
General Criminal Statutes
Version 5.0**

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THE MISSION OF POST

The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

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Student Workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course Training Requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student Workbook Elements

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

HOW TO USE THE WORKBOOK

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

Workbook Format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <u>term</u>).

Chapter 1

Identifying and Classifying Crimes Related to Disorderly Conduct

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers need to know the elements required to arrest for crimes related to disorderly conduct and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objective

The chart below identifies the student learning objectives in this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest for:<ul style="list-style-type: none">Lewd conductInvasion of privacyProstitutionLoitering about a public toiletPublic intoxication	8.01.5
<ul style="list-style-type: none">Recognize the crime classification as a misdemeanor or felony	8.01.9

In This Chapter

This chapter focuses on recalling, classifying, and categorizing crimes related to disorderly conduct. Refer to the following chart for specific topics.

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GENERAL CRIMINAL STATUTES

Introduction

The effective investigation of crimes involves apprehending criminals, assisting crime victims, and protecting the community. To be an effective peace officer, the student must understand how these components interconnect.

Leadership

General criminal statutes are directly related to the community's expectation of safety, security, and they are a "quality of life" issue. Peace officers have not only an ethical obligation to enforce these statutes, but they have a leadership responsibility to handle these crimes in such a manner that the community looks to the peace officer for guidance and direction regarding all matters associated crimes.

This translates to peace officers being the pivotal point for crime prevention programs, neighborhood watch programs and other activities where the peace officer partners with the community to develop strategies that enhance the general safety and welfare of the community at large and enhance the quality of life for all citizens.

Ethics

Crimes that fall into the category of general criminal statutes can appear minor in comparison to robbery, rape or murder. However, the community at large has an expectation that peace officers will respond to crimes of any nature with the same level of competency and professionalism as they would respond to a more serious crime. Peace officers have an ethical obligation to meet the community's expectations in such a manner that they cause the community to develop a sense of trust and confidence in the officer's law enforcement agency.

Policing in the Community

General criminal statutes are intended to protect community members against crimes that diminish the sense of safety and privacy in the home and in public. Some of these crimes are lewd conduct, invasion of privacy, prostitution, loitering about a public toilet and public intoxication. While these crimes are sometimes seen as low priority, ignoring or even tolerating them can contribute to the deterioration of a neighborhood. Peace officers and community members can form partnerships to keep neighborhoods free of all levels of crime.

Procedural Justice

In enforcing general criminal statutes, it is particularly important to remember to incorporate the principals of procedural justice and to treat suspects, victims, witnesses, and other members of the public, with respect. The bulk of your daily interactions with the public will involve enforcing these statutes, and your relationship with the community will depend on these interactions.

The people of California have a right to fair, impartial, and effective policing.

LEWD CONDUCT

Definition

The crime of **lewd conduct**, *Penal Code Section 647(a)* states: Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

NOTE: No skin-to-skin contact is required. Touching can be through clothing.

Penal Code Section

Lewd conduct is covered under *Penal Code Section 647(a)*.

Crime Elements

To arrest a subject for the crime of lewd conduct, the necessary crime elements include:

- Any person who solicits or engages
- In lewd conduct
- In a public place
- Or a place open to public view

Classification

Lewd conduct is a misdemeanor.

Related Terms

To understand the crime of lewd conduct, peace officers need to become familiar with the following terms.

Lewd conduct means the touching or soliciting someone to touch the genitals, the buttocks, or the female breast with the intent to sexually arouse gratify, annoy, or offend. "Touching" includes the touching of oneself or another.

Public view means an area that can be seen by others.

Public place means any area that is accessible to the general public such as a park, street, building open to the public, movie theaters, department stores, or public offices.

Examples

A man sat on a park bench. When women walk past him, he openly rubbed his genitals for them to see while saying “hey check this out.” The man has committed the crime of lewd conduct because he rubbed his genitals in an attempt to arouse while in a public place.

A woman sat at a bar during happy hour. To get attention from some of the men, she opened her blouse to expose her bare breasts and invited everyone to touch them. The woman has committed the crime of lewd conduct because she was attempting to engage in sexual arousal in a public place.

INVASION OF PRIVACY

Definition

Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, or camcorder, or mobile phone the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. *Penal Code Section 647(j)(1)*.

Penal Code Section

Invasion of privacy is covered under *Penal Code Section 647(j)(1)*.

Crime Elements

To arrest a subject for **invasion of privacy**, the necessary crime elements include:

- Looking through
- A hole or opening or otherwise viewed by means of any instrumentality into a private area
- With the intent to invade the privacy of people therein

Classification

Invasion of privacy is a misdemeanor.

Examples

A man climbed into a tree and looked around using his binoculars. He looked toward a nearby building and noticed that a window opened into a bathroom. He focused on the window and saw a woman taking a shower. He has committed the crime of invasion of privacy because he continued to look into an open window even when he realized it was a private bathroom.

A security guard at the local health club drilled holes into the men's and women's bathrooms. He then covered each hole with a picture. Whenever anyone entered a bathroom, he moved the picture aside and looked in and watched the person use the toilet. He has committed the crime of invasion of privacy because he invaded the privacy of the people by peering into the bathroom.

PROSTITUTION

Definition

The crime of **prostitution** occurs when a person solicits another person or agrees to engage in any lewd act for money or other consideration.

Penal Code Section

Prostitution is covered under *Penal Code Section 647(b)*.

Crime Elements

To arrest a subject for prostitution, the necessary crime elements include:

- Any person who solicits
- Agrees to engage in
- Engages in
- Any act of prostitution, or
- Some act is agreed to and done in the furtherance of prostitution

Classification

Prostitution is a misdemeanor.

Additional Penal Code Sections

The table below shows additional penal code sections which deal with specific incidences of the crime of prostitution.

Circumstances of Crime	Crime Classification	<i>Penal Code Section</i>
Pimping	Felony	<i>266h</i>
Pandering (obtaining another person to be a prostitute)	Felony	<i>266i</i>
Loitering with intent to commit prostitution	Misdemeanor	<i>653.22(a)</i>

Related Terms

To understand the crime of prostitution, peace officers need to become familiar with the following term.

Solicit means to seek to induce or try to obtain.

Examples

A man walked by a group of women. One woman called out to him and offered to take him to a room and perform multiple sex acts for \$100. The woman has committed the crime of prostitution because she offered sex in return for payment

Two men in a gay bar were talking and dancing. One man offered to pay the other for sex and money exchanged hands. They have committed the crime of prostitution because one offered payment (solicitation), and the other accepted the money.

LOITERING ABOUT A PUBLIC TOILET

Definition

The crime of **loitering about a public toilet** means lingering in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd, lascivious, or unlawful act.

Penal Code Section

Loitering about a public toilet is covered under *Penal Code Section 647(d)*.

Crime Elements

To arrest a subject for loitering about a public toilet, the necessary crime elements include:

- Loitering in or about
- Any toilet facility
- Open to the public
- For the purpose of soliciting or engaging in
- A lewd or lascivious or unlawful act

Classification

Loitering about a public toilet is a misdemeanor.

Examples

A man stood inside the men's room at the local amusement park. He eyed each man as he came into the bathroom. The man would walk up to each man and stare at the man's genitals as he urinated saying, "Can I help you with that?" The man has committed the crime of loitering about a public toilet to engage in a lewd act by watching men go to the bathroom.

A man stood outside a public restroom. Every time a woman walked past him he offered to engage in oral sex. The man has committed the crime of loitering about a public toilet because he was soliciting a lewd act.

PUBLIC INTOXICATION

Definition

The crime of **public intoxication** occurs when a person is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, or toluene to the extent that he or she cannot care for his or her own safety or the safety of others or is obstructing any street, sidewalk, or public way.

Penal Code Section

Public intoxication is covered under *Penal Code Section 647(f)*.

NOTE: *Penal Code Sections 647(f) and 647f* are different Penal Code Sections.

Crime Elements

To arrest subject for public intoxication, the necessary crime elements include:

- Any person in a public place
- Under the influence of alcohol or drugs, and who
- Is unable to care for his or her own safety or the safety of others or is obstructing a public way

NOTE: Public intoxication does not require either field sobriety tests or chemical tests.

Classification

Public intoxication is a misdemeanor.

Examples

A woman sat on a park bench and drank out of a wine bottle in a brown paper bag. After several minutes, she passed out. The woman has committed the crime of public intoxication because she was under the influence of alcohol and unable to care for herself in a public place.

A man drank a bottle of alcohol while sitting in a bar. At one point he got so intoxicated he fell on the floor and couldn't get up again. The man has committed the crime of public intoxication because he was under the influence of alcohol in a public place and obstructed a public way.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers need to know the elements required to arrest for crimes related to disorderly conduct and to correctly categorize these crimes as misdemeanors or felonies.

Lewd Conduct [8.01.5]

Any person who solicits or engages in lewd conduct in a public place or a place open to the public

Prostitution [8.01.5]

Any person who solicits or agrees to engage in or engages in any act of prostitution, or some act is agreed to and done in the furtherance of prostitution.

Loitering About a Public Toilet [8.01.5]

Loitering in or about any toilet facility open to the public for the purpose of soliciting or engaging in a lewd or unlawful act.

Public Intoxication [8.01.5]

The crime of public intoxication occurs when a person is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, or toluene to the extent that he or she cannot care for his or her own safety or the safety of others or is obstructing any street, sidewalk, or public way.

Crime Classifications Misdemeanor/Felony [8.01.9]

The various penal codes mentioned in this chapter specify the types of crimes and their classifications.

Invasion Of Privacy [8.01.5]

The invasion of privacy is looking into a private area with the intent to invade the privacy of an individual.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Describe three prostitution related crimes that would be classified as felonies.
2. A woman called peace officers to report that her male neighbor, regularly sunbathes in the nude in his fenced backyard. The yard, however, is visible from her second-floor deck. On this occasion, the woman's seven-year-old son went out on the balcony and saw the neighbor begin to masturbate as he sunbathed. What, if any, crime has the man committed? What action should the peace officers take?

3. A man stumbled, fell and remained seated blocking a sidewalk. Officers arrived and noticed the man smelled heavily of an alcoholic beverage. He was arrested and the following day he protested his arrest claiming that there were no tests administered. Did peace officers, in this instance, fail to collect required evidence? Explain.

4. Four tourists are lingering in a public toilet at a state park where it is raining heavily. They are inconveniencing others because they are taking up space in a small facility, but their intent is only to stay dry until the storm passes. The park ranger tells them that he will arrest them for loitering about a public toilet if they don't leave the facility. Is this a correct response?

Chapter 2

Identifying and Classifying Crimes Related to Public Nuisance

OVERVIEW

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers need to know the elements required to arrest for crimes related to public nuisance and to correctly categorize these crimes as misdemeanors or felonies.

Learning Objectives

The chart below identifies the student learning objectives in this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the crime elements required to arrest for:<ul style="list-style-type: none">Disturbing the peaceObstruction of a public wayProwling and peeping	8.02.13
<ul style="list-style-type: none">Recognize the crime classification as a misdemeanor	8.02.12

In This Chapter

This chapter focuses on recalling, classifying, and categorizing crimes related to disorderly conduct. Refer to the following chart for specific topics.

Topic	Page
Prowling	2-3
Peeping	2-5
Disturbing the Peace	2-7
Obstruction of a Public Way	2-10
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Definition

The crime of **prowling** is when a person loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant.

Penal Code Section

Prowling is covered under *Penal Code Section 647(h)*.

Crime Elements

To arrest a subject for prowling, the necessary crime elements include:

- Any person who loiters, prowls, or wanders
- On private property of another, at any time
- Without visible or lawful business with the owner or occupant

Loiter means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

NOTE: The owner or occupant does not have to be present.

Classification

Prowling is classified as a misdemeanor.

Examples

A woman who does not live at or know the occupants of a residence enters the back yard looking for something of value to steal.

A man walked around a housing complex in the middle of the day. He walked from house to house and rang doorbells to see if the residents were home. When another resident walked by, he pretended to be waiting for the bus. He has committed the crime of prowling because he was loitering on private property.

Definition

The crime of **peeping** is when a person, while loitering, prowling, or wandering upon private property, peeks in the door or window of any inhabited building or structure and has no visible or lawful business with the owner or occupant.

Penal Code Section

Peeping is covered under *Penal Code Section 647(i)*.

Crime Elements

To arrest a subject for peeping, the necessary crime elements include:

- Loitering, prowling, or wandering
- On the private property of another, at any time
- Peeking in the door or window of any inhabited building or structure
- Without visible or lawful business with the owner or occupant

NOTE: The Peeping must meet all the elements of prowling (*Penal Code Section 647(h)*) in addition to violating the elements related to peeping.

Classification

Peeping is classified as a misdemeanor.

Examples

At around two in the morning, a man wandered around outside a house not in his neighborhood. He looked into several windows and stopped at one where he saw a child sleeping. The man has committed the crime of peeping because he was looking in the windows of an occupied house that was not his own.

A woman was prowling around the first floor of an apartment building and looking into the basement windows. When the maintenance man asked her what she was doing, she walked away from the building. The woman has committed the crime of peeping because she was looking into the windows of a private apartment building without any lawful purpose.

DISTURBING THE PEACE

Introduction

Disturbing the peace occurs when a person's activity causes unlawful fighting, making loud or unreasonable noises, or using offensive words.

Definition

The crime of **unlawful fighting** is when a person unlawfully fights in a public place or challenges another person in a public place to fight.

The crime of **making loud and unreasonable noise** is when a person maliciously and willfully disturbs another person by loud and unreasonable noise.

The crime of **using offensive words** is when a person uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

Penal Code Section

Unlawful fighting is covered under *Penal Code Section 415(1)*.

Making loud and unreasonable noises is covered under *Penal Code Section 415(2)*.

Using offensive words is covered under *Penal Code Section 415(3)*.

Crime Elements

Fighting	Loud Noises	Offensive Words
<ul style="list-style-type: none">Unlawfully fighting or challenging to fightIn a public place (or place open to public view or access)	<ul style="list-style-type: none">Willfully and maliciouslyDisturbing another personBy loud and unreasonable noise	<ul style="list-style-type: none">Using offensive wordsIn a public placeWhich are inherently likely to provoke an immediate violent reaction

Classification

Disturbing the peace is a misdemeanor.

First Amendment Rights and Use of Offensive Words

Words, shouting, or cheering that are intended to express ideas are considered communication. These ideas are protected under the First Amendment to the U.S. Constitution which guarantees the right to freedom of speech.

The utterance of offensive words must be “inherently likely to provoke an immediate violent reaction” based on the circumstances then present. This reaction applies to anyone, including peace officers.

It is necessary for reports to illustrate the circumstances in which the utterance was made. Any violent reaction which did not occur as a result of the utterance should be explained.

Determining a Loud Noise

The chart below lists three factors to help the peace officer determine if noise is unreasonable.

The noise might be considered unreasonable because of the...	For example...	However...
Time of day	A motorcycle revving up at 3 a.m.	Revving up at 10 a.m. May be annoying, but is not unreasonable
Place where noise takes place	A person talking loudly in a public library	Addressing the librarian in a conversational tone is normal business
Manner in which noise is made	A driver honking the car horn because the driver is impatient and just wants the other cars to get out of the way	Honking of the car horn as a warning that the other car is veering into the wrong lane of traffic is acceptable noise

Examples

A teenage boy was a member of a band that usually practiced in his garage in the early evening. One summer day, they left the garage door open and continued to play past midnight. The neighbor repeatedly requested that the boy close the garage door, but the boy refused. The neighbor called the police. The boy has committed the crime of loud noises because of the unreasonably late hour.

At 5:00 am on a Sunday morning, a man used his new gas-powered leaf blower to clean up his yard. Because the time of his use is unreasonable, the neighbor called the police. The man committed the crime of disturbing the peace.

OBSTRUCTION OF A PUBLIC WAY

Introduction

A person who willfully and maliciously obstructs a public way and forces people to go out of their way is committing a crime.

Definition

The crime of **obstruction of a public way** occurs when a person willfully and maliciously obstructs the free movement of another person on any street, sidewalk, or other public place.

NOTE: Nothing in this section affects the power of a state, county or a city to regulate conduct upon public way.

Penal Code Section

Obstruction of any public way is covered under *Penal Code Section 647c*.

Crime elements

In order to arrest a subject for obstruction of streets, sidewalks, or other public way, the necessary crime elements include:

- Any person who willfully and maliciously
- Obstructs the free movement of any person
- On any public way

Classification

Obstruction of any public way as a misdemeanor.

Examples

A group of teenagers gathered at the corner of a busy downtown intersection with a lot of pedestrian traffic. They refused to move out of the way so that other people could walk past them. The pedestrians were forced to step into the street to walk around the group. The group has committed the crime of obstructing a public way because they prevented people from using the sidewalk.

The limousine of a visiting controversial dignitary drove down the city's main street. As it passed through the third block, several protestors broke through the police lines, stood in the street, chanted protest slogans, and prevented the limo from continuing. The protestors have committed the crime of obstructing a public way because they are willfully preventing free movement of vehicles in the street, and they had no permit allowing them to use the street for a protest.

Learning Need

Arrest and successful prosecution depend on the development of probable cause. Peace officers need to know the elements required to arrest for crimes related to public nuisance and to correctly categorize these crimes as misdemeanors.

Prowling [8.02.13]

Any person who loiters, prowls, or wanders on private property of another without visible or lawful business for the purpose of committing a crime.

Peeping [8.02.13]

Any person loitering, prowling, or wandering on private property and peeking into doors or windows without lawful business with the intent to commit a crime.

Disturbing the Peace [8.02.13]

Disturbing the peace occurs when a person's activities cause offense, disturbance, or obstruction in a public area, such as unlawful fighting, making loud or unreasonable noise, or using offensive words.

Crime Classifications Misdemeanor/Felony [8.02.12]

Based on penal codes referenced in this chapter all the types of crimes are classified as misdemeanors.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Describe an instance in which cursing and using obscenities in public would be considered to be disturbing the peace. Then, describe an instance in which the same language would not be considered to be disturbing the peace.

2. Peace officers arrive on the scene at a local deli. A man has positioned himself on a public sidewalk directly in front of the entrance. He is stepping directly in front of anyone trying to enter the restaurant and explaining to each person that he received poor treatment and service in the establishment. What action, if any, should the officers take? How would this differ if the man just steps up to people, begging their pardon, and explains the poor treatment without ever standing in their way.

Glossary

Introduction

The key vocabulary terms for Learning Domain 08: General Criminal Statutes are listed below with the definitions as they apply to this workbook.

Disturbing the Peace

A person's activity causes unlawful fighting, making loud or unreasonable noises or using offensive language

Invasion Of Privacy

A person looks through a hole or opening with or without the aid of some instrument (e.g., a periscope, telescope, binoculars, camera, or camcorder) into the interior of a bathroom or the interior of any other area in which the occupant has a reasonable expectation of privacy

Lewd Conduct

touching or soliciting someone to touch the genitals, the buttocks or the female breast with intent to sexually arouse, gratify, annoy, or offend, while in a public place or in public view

Loiter

To delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered

Loitering About a Public Toilet

Lingering in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd, lascivious, or any unlawful act

Making Loud and Unreasonable Noise

A person maliciously and willfully disturbs another person by loud and unreasonable noise

Obstruction Of a Public Way

A person willfully and maliciously obstructs the free movement of another person on any street, sidewalk, or other public place

Peeping

A person, when loitering, prowling, or wandering upon private property, peeks in the door or window of any inhabited building

Prostitution

A person solicits another person or agrees to engage in any lewd act for money or other consideration

Prowling

A person loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant with the intent to commit a crime

Public Intoxication

A person is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, or toluene to the extent that he or she cannot care for his or her own safety or the safety of others, or he or she is obstructing any street, sidewalk, or public way.

Public Place

Any area that is accessible to the general public such as a park, street, building open to the public, movie theaters, department stores, or public offices

Public View

An area that can be seen by others

Solicit

To seek to induce or try to obtain

Unlawful Fighting

A person unlawfully fights in a public place or challenges another person in a public place to fight

Using Offensive Words

A person uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction