

“Homeless in Phoenix: Know Your Rights” is a publication of the American Civil Liberties Union (ACLU) of Arizona.

The ACLU of Arizona is the state’s premier guardian of liberty, working daily in the courts, Arizona Legislature and communities statewide to defend and preserve individual rights and freedoms guaranteed to all by the Constitution and the laws of the United States and Arizona.

If you believe that your civil rights have been violated by a government agency (such as the police, the post office, or a public school), contact the ACLU of Arizona:

By Mail

ACLU-AZ Intake
P.O. Box 17148
Phoenix, AZ 85011

By Phone

602-650-1854

Online: www.acluaz.org

The ACLU is not a general legal assistance organization. It only deals with cases where a person’s civil rights or civil liberties have been violated by the government.

If you need help with a general legal problem, you should go to Community Legal Services (legal aid). Their phone number is 602-258-3434, or you can go to their office, located at 305 S. Second Avenue (near 2nd Ave and Jackson) in downtown Phoenix.

Homeless in Phoenix: Know Your Rights

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This is a publication of the American Civil Liberties Union (ACLU) of Arizona. We have developed this booklet to provide useful information about laws that may affect people who are experiencing homelessness in Phoenix, Arizona. Thank you to Arthur Liman Public Interest Fellowship & Fund 2011 Summer Fellow, Amalia Skilton for compiling the information in this booklet.

This document is for educational purposes only. This document is not a substitute for the advice of an attorney and does not create an attorney-client relationship with you. The materials and information contained in this document may not reflect the most current legal developments.

Also, **this document does not represent the opinion of the ACLU of Arizona.** The ACLU does not agree with many of the city ordinances and state laws described in this booklet. In fact, the ACLU believes that some of these laws may be unconstitutional. However, it is important to know what the laws say, so that you can be prepared if someone accuses you of a crime or other offense.

Specific questions and incidents can be addressed by contacting the ACLU of Arizona. Contact information is on the back of this booklet. If you have suggestions or corrections, please contact info@acluaz.org.

What to Do if You Are Taken into Immigration (“ICE”) Custody

- You have the right to a lawyer, but the government does not have to provide one for you. If you do not have a lawyer, ask for a list of free or low-cost legal services.
- You have the right to contact your consulate or have an officer inform the consulate of your arrest.
- Tell the ICE agent you wish to remain silent. Do not discuss your immigration status with anyone but your lawyer.
- Do not sign anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.
- Remember your immigration number (“A” number) and give it to your family if you can. It will help them to locate you.
- Keep a copy of your immigration documents with someone you trust.

24. How to Report Police Misconduct

Remember: police misconduct cannot be challenged on the street. Don’t physically resist officers or threaten to file a complaint.

Write down everything you remember, including officers’ badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).

If you believe that the police or immigration officials have violated your rights, contact the ACLU of Arizona. The ACLU may be able to assist you in filing a complaint against the officer.

- A warrant of removal or deportation (ICE warrant) does not allow agents to enter a home without consent.

What to Do if the Police or Immigration Ask You about Your Immigration Status

- You have the right to remain silent and do not have to discuss your immigration or citizenship status with police, immigration agents or any other officials. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas, including tourists and business travelers.)
- If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you. If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent.
- Do not lie about your citizenship status or provide fake documents.

What to Do if You Are Arrested

- Do not resist arrest, even if you believe the arrest is unfair.
- Say you wish to remain silent and ask for a lawyer immediately. Don't give any explanations or excuses. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer.
- You have the right to make a local phone call. The police cannot listen if you call a lawyer.

1. Table of Crimes

Here is a list of the possible punishments for each type of crime described in this booklet. A violation of a city of Phoenix ordinance is usually, but not always, a class 1 misdemeanor.¹

Crime	Punishment
Class 5 felony	Up to 2.5 years prison.
Class 6 felony	Up to 2 years prison. ²
Class 1 misdemeanor	Up to 6 months jail and up to \$2500 fine.
Class 2 misdemeanor	Up to 4 months jail and up to \$750 fine.
Class 3 misdemeanor	Up to 30 days jail and up to \$500 fine. ³

2. Blocking the Sidewalk

You may not obstruct a sidewalk, street, alley, park, or other public property in Phoenix:

- In a way that is dangerous or offensive; or
- Such that other people cannot use the property.⁴

Penalty: Blocking the sidewalk is a class 1 misdemeanor. People are often arrested for blocking the sidewalk during otherwise lawful, First Amendment-protected protests. If you are participating in a protest, and a police officer says that you are blocking the sidewalk and tells you to move, you should move. If you think that your rights have been violated during a demonstration or protest, please contact the ACLU of Arizona.

3. Jaywalking

On a road where there are traffic lights, you may only cross at a crosswalk.⁵ On a road where there are no traffic lights, you must cross the street by the shortest route and at a right angle to the curb.⁶

Penalty: A traffic fine of no more than \$250.

¹ P.C.C. §1-5.

² For a first-time felony offender. Penalties can be more severe if you have more felonies. A.R.S. 13-702(D).

³ A.R.S. 13-707(A), A.R.S. 13-802(A)

⁴ P.C.C. §23-9.

⁵ A.R.S. 28-793(C).

⁶ P.C.C. §36-128.

4. Trespassing

You commit the crime of trespassing if you enter another person's property without their permission, and:

- There is a "No Trespassing" sign, or
- You stay on the property after the owner or his agent tells you to leave, or
- You knowingly enter a building, home or fenced yard without the owner's permission or after being asked to leave the property.⁷

You do not commit trespassing if you enter non-residential private property where there is no fence or "No Trespassing" sign. If you are outdoors on private property with no fence or sign, you are not guilty of trespassing unless the owner or his designated person has told you to leave and you have refused.

Penalty: Trespassing where you enter the building or fenced yard of a business is a class 2 misdemeanor. Trespassing where you do not enter a fenced yard or building is a class 3 misdemeanor.⁸

Penalties for trespassing are more severe if you enter a house, the yard of a house, or a facility such as a power station.

5. Loitering

You commit the crime of loitering when you are in a public place and you do one of the following things:

- You ask someone to commit a sex offense.
- You sell goods or services in a transportation facility.
- You gamble without legal authorization.
- You are present in the public place solely in order to beg.
- You are at a school or college campus; are not a student at the school; are not at the school to meet a student or for another specific reason; and remain at the school after being asked to leave.

- You have the right to remain silent and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud.
- In Arizona, you must give your name if asked to identify yourself.

What to Do if the Police or Immigration Attempt to Search You or Your Property

- If the police or immigration want to search you or your property, ask them to show you a warrant.
- If the police do not have a warrant, you do not have to consent to a search of yourself or your belongings, but police may "pat down" your clothing if they suspect a weapon.
 - You should not physically resist the search, but you have the right to refuse consent for any further search. If you do consent, it can affect you later in court.
 - Many different things can be construed as consent to a search. If you do not consent to a search, say clearly to the officer, "I do not consent to this search."
 - Your belongings include belongings that you carry in a closed box or bag, or in a cart. You do not have to consent to a search of any of your belongings, even if they are in a public place.
- If the police or immigration have a warrant, ask them to show you the warrant. You are only obliged to allow a search if they have certain types of warrants.
 - A search warrant allows the agents to enter the location listed on the warrant, but they can only search for the items listed and in the areas listed.
 - An arrest warrant allows the agents to search a location for the person listed on the warrant if they believe that the person is inside.

⁷ A.R.S. 13-1503 *et seq.*

⁸ A.R.S. 13-802, A.R.S. 13-707(A).

23. Dealing with a Police Officer or Immigration Officer

Note: Below are some of the main laws about speaking or dealing with a police officer. These are not all the laws but are only a guide.

Your Rights

- You have the right to remain silent. If you wish to exercise that right, say so out loud.
- You have the right to refuse to consent to a search of yourself, your car or your belongings.
- If you are not under arrest, you have the right to calmly leave.
- You have the right to a lawyer if you are arrested. Ask for one immediately. You can say that you will not answer questions until you have talked to a lawyer. This applies even if you do not have a lawyer at the time you refuse to answer questions.
- Regardless of your immigration or citizenship status, you have constitutional rights.

Your Responsibilities

- Do stay calm and be polite.
- Do not interfere with or obstruct the police.
- Do not lie or give false documents.

What to Do if the Police or Immigration Stop You For Questioning

- Stay calm. Don't run. Don't argue, resist or obstruct the police, even if you are innocent or the police are violating your rights. Keep your hands where the police can see them.
- Ask if you are free to leave. If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.

- You block the sidewalk, alone or with a group of other people, so that pedestrians cannot walk past you.
- You enter or remain in a City park, playground or recreation area when it is closed.
- You remain at a place of public accommodation (such as a business) after the owner or his agent tells you to leave.⁹

You do not commit loitering simply by entering and remaining in a public place. You can only be charged with loitering if you do one of the acts described above.

Penalty: The first four types of loitering listed above are class 3 misdemeanors. The other three types of loitering mentioned are class 1 misdemeanors.

6. "Urban Camping" and Sit/Lie Law

The city makes it a crime to sleep in many public places. There are two laws relevant to this.

"Urban Camping": You may not camp in any park, preserve, building, parking lot or other land that belongs to the City of Phoenix, unless you have a permit from the city Department of Parks and Recreation. The following activities can be considered "camping":

- Sleeping
- Making preparations to sleep or laying down bedding
- Storing belongings
- Pitching a tent or parking a vehicle to sleep in
- Making a fire
- Cooking
- Digging or breaking ground.¹⁰

Sit/Lie Law: You may not sit, lie or sleep on a public street, sidewalk or alley, except because of a physical emergency or to receive medical attention.¹¹

⁹ A.R.S. 13-2905(A)(1-5); P.C.C. §23-8(a-c).

¹⁰ P.C.C. §23-30(a-b).

¹¹ P.C.C. §23-48.01.

The urban camping and sit/lie laws do not apply to private property. You cannot be charged with violating these laws or the trespassing law for sleeping on private property with the permission of the owner.

Also, federal courts in California and Florida have ruled that if a city does not provide enough shelter beds to accommodate all of its homeless residents, the city cannot enforce a complete ban on sleeping in public. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1132 (9th Cir. 2006); *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1559 (S.D.Fla. 1992). The reasoning behind these decisions was that it is “cruel and unusual punishment” (in violation of the Eighth Amendment to the Constitution) to cite or arrest someone for sleeping in public if they have no access to a private place to sleep.

If you are cited or arrested by a Phoenix police officer for sleeping in public on a day when you were not able to sleep at a shelter (because of shelter requirements, overcrowding, or disability), you should contact the ACLU of Arizona.

Penalty: Breaking either the urban camping law or the sit/lie law is a class 1 misdemeanor.

7. Disorderly Conduct

You commit the crime of disorderly conduct when you do any of the following things, in a way that “disturbs the peace” or quiet of another person or a neighborhood:

- You fight or engage in disruptive or violent behavior.
- You make unreasonable noise.
- You speak or gesture to a person in a way that is meant to provoke violence.
- You disobey a public safety worker’s order to move away from a fire, hazard or other emergency.
- You disrupt a lawful meeting or gathering.
- You recklessly handle or discharge a deadly weapon.¹²

Penalty: Disorderly conduct with a deadly weapon is a class 6 felony. Other disorderly conduct is a class 1 misdemeanor.

¹² A.R.S. 13-2904(A).

22. Education

All children and youth in Arizona who are between 6 and 21 years old and have not received a high school diploma have the right to receive a free and appropriate public education. This includes children and youth who are experiencing homelessness.

Under a federal law called the McKinney-Vento Act⁴³, U.S. school districts have certain special obligations to children who are homeless. For purposes of the McKinney-Vento Act, any child who does not have a “fixed, regular and adequate” nighttime residence is considered homeless. This includes children who are living with family friends or relatives because of economic hardship.⁴⁴

One important requirement of the McKinney-Vento Act is that every school district must have a Homeless Liaison. The Homeless Liaison’s job is to help children experiencing homelessness enroll in school and be academically successful.⁴⁵ Another important requirement is that if a child becomes homeless during the school year, her family must have the choice either to keep her enrolled in his current school, or to transfer to the school closest to the location where she actually lives.⁴⁶ If a child is not staying with her family, this right to choose belongs to her.

If you experience a problem getting a free and appropriate public education for your child or for yourself if you are under 21 years old and do not have a high school diploma, you should contact the Homeless Liaison for your school district. If the Homeless Liaison does not help you to enroll your child or keep her enrolled, you should contact the ACLU of Arizona.

⁴³ 42 U.S.C. § 11301 *et seq.*

⁴⁴ 42 U.S.C. § 11434(a) (2) “Homeless children and youths.”

⁴⁵ 42 U.S.C. § 11432(g)(1)(J)(ii).

⁴⁶ 42 U.S.C. § 11432(g)(3)(A).

21. Voting

You have the right to vote in Arizona if all of the following are true:

- You are a citizen of the United States.
- You have lived in Arizona for at least 29 days.
- You are at least 18 years old.
- You are not a convicted felon, or if you are, your civil rights have been restored. (Contact the ACLU of Arizona if you are a convicted felon and want assistance restoring your civil rights.)
- You have not been adjudicated incompetent by a court.⁴¹

In Arizona, state law explicitly says that you do not need a fixed address in order to vote. You can use any of the following addresses as your address on your voter registration form:

- A shelter (if you are staying regularly at that shelter).
- The physical location where you live, even if it does not have a street address.
- The address of the county courthouse in the county where you live. (The address of the Maricopa County Superior Court courthouse is 201 W. Jefferson Street, Phoenix, AZ 85003.)
- A general delivery address at the post office which serves the location where you live.⁴²

⁴¹ A.R.S. 16-101(A).

⁴² A.R.S. 16-121.

8. Public Sexual Activity (“Public Indecency”)

It is illegal to do the following in a public place:

- Have sexual intercourse.
- Have sexual contact, which is touching another person’s clothed or unclothed genitals or breast.¹³
- Display sexually explicit material.¹⁴

Penalty: Class 1 misdemeanor. If you commit public indecency in the presence of a child under 15 years old, you can be charged with public indecency to a minor, which is a class 5 felony.¹⁵

9. Indecent Exposure

It is illegal to expose your genitals, anus, or the nipple or areola of your breast to another person in a way that is offensive or alarming to that person.

Penalty: Class 1 misdemeanor, but class 6 felony if a child under 15 years old is present.

10. Urination in Public

It is illegal to urinate or defecate on a public sidewalk, crosswalk, path, or street, or in a public park. It is also illegal to urinate or defecate in any public place that is easily visible or accessible from the street.¹⁶

Penalty: Class 1 misdemeanor.

11. Sex Work

“Prostitution” is defined as having sex, or agreeing or offering to have sex, in exchange for a fee.¹⁷ State law says that prostitution is illegal. In Phoenix, it is also illegal to solicit a prostitute.¹⁸

¹³ A.R.S. 13-1403(A), A.R.S. 13-1401(2).

¹⁴ P.C.C. §23-70.01.

¹⁵ A.R.S. 13-1403(C).

¹⁶ P.C.C. §23-48.

¹⁷ A.R.S. 13-3211(5). Having sex in exchange for a non-money fee, such as for drugs or alcohol, is still prostitution.

¹⁸ A.R.S. 13-3214(A), P.C.C. §23-52(A).

Penalty: Soliciting a prostitute is a class 1 misdemeanor. Prostitution is a class 1 misdemeanor with a mandatory jail sentence of 15 days for the first offense, 30 days for the second offense and 60 days for the third offense. If you are convicted of prostitution more than three times, the fourth offense is a class 5 felony and you must serve at least 180 days in jail.¹⁹

12. Assault

You commit assault when you:

- Cause someone physical injury.
- Cause someone to fear immediate physical injury.
- Cause contact with someone with the intent to injure, insult or provoke them.²⁰

Penalty: Intentional assault which causes actual physical injury is a class 1 misdemeanor. Recklessly causing injury, or causing someone to fear injury, is a class 2 misdemeanor. Contact with the intent to injure or insult is a class 3 misdemeanor. Additionally, threatening to assault someone is a class 1 misdemeanor.²¹

The penalties for assault and for threatening assault can be greater if you live with the victim, are related to them, or have had a sexual relationship with them in the past. The assault can then be classified as a “domestic violence” crime.²² Also, the penalties for assault and for threatening assault are greater if you assault someone in retaliation for them reporting a crime, or if you assault someone in order to make that person commit a crime.²³

¹⁹ A.R.S. 13-3214(D).

²⁰ A.R.S. 13-1203.

²¹ A.R.S. 13-1202.

²² A.R.S. 13-3601(A).

²³ A.R.S. 13-1202(B).

Penalty: Bathing, swimming, or fishing without authorization in a park is a class 1 misdemeanor.

Being Banned from a Park. A park department employee can tell you to leave the park for breaking any park rule or regulation, or any federal, state or local law. You must leave the park when asked and may not return to that specific park on the same day.³⁷

Penalty: Disobeying a request to leave a park is a class 1 misdemeanor.

20. Public Transportation

It is illegal to do any of the following things on a bus or light rail train (this is not a complete list):

- Lie down or place your feet on a bus or train seat.
- Possess or drink from an open container of alcohol.
- Smoke or possess any burning or hazardous object.
- Spit, defecate, urinate, or litter on a bus or train, or at a bus or train station.³⁸

Penalty: All violations of the laws about conduct on buses and trains are civil offenses. If you break one of these laws, you can be required to pay a fine between \$50 and \$500.³⁹ Also, if you receive a ticket for misconduct on a bus or train, you can be banned from riding the train until you have paid the ticket. If you have already received one ticket and you receive another, you will be banned from riding the train for 90 days.⁴⁰

³⁷ P.C.C. §24-54.

³⁸ P.C.C. §36-403.

³⁹ P.C.C. §36-407.

⁴⁰ P.C.C. §36-405.

Penalty: Being in a park after hours is the crime of loitering, a class 1 misdemeanor. Entering a non-public area of a park is a class 1 misdemeanor. If you are convicted of entering a non-public area of a park, the court must fine you at least \$50 and require you to perform at least 8 hours of community service.

Vandalism in a Park. You may not damage any built or natural structure or feature of a park, or collect, remove, or destroy any plant or animal in a park. This is the offense of vandalism in a park.³³

Penalty: Vandalism in a park is a class 1 misdemeanor. The penalty for vandalism in a park must include a fine of at least \$50 and at least 8 hours of community service. Additionally, if you are convicted of this crime, the court must require you to make restitution (pay an additional fine or do extra community service) to the City of Phoenix for the cost of the damage you caused to the park.

Smoking, Eating or Drinking in a Park. You may not possess a glass bottle or other beverage container in a park, except in Heritage Square, the Encanto Clubhouse, and Shemer Art Center and Museum.³⁴ You also may not possess alcohol in a park unless you have an alcohol permit (see section 16 above). Finally, if a park has “no smoking” signs posted, you may not smoke in that park.³⁵

Penalty: Possessing glass in a park is a class 1 misdemeanor. Intentionally or carelessly breaking a piece of glass in a park is a class 1 misdemeanor with a minimum fine of \$50 and minimum 8 hours of community service. Smoking or possessing alcohol in a park, where prohibited, is a class 1 misdemeanor.

Water in Parks. You may not swim or bathe in any body of water in a park, except for a public swimming pool. You may not fish in a park unless you have a valid state fishing license.³⁶

³³ P.C.C. §24-37(A).

³⁴ P.C.C. §24-39.

³⁵ P.C.C. §24-42(A).

³⁶ P.C.C. §24-48(A), P.C.C. §24-48(D).

13. Noise

You may not create any “unreasonably loud or disturbing” noise. The following noises are presumed to be unreasonable (this is not a list of all unreasonable noises):

- Playing radios or musical instruments loud enough to disturb homes and businesses, especially between 11pm and 7am.
- Yelling or shouting in the street, especially between 11pm and 7am.
- Using drums, loudspeakers or musical instruments to advertise merchandise or performances.²⁴

Penalty: The Phoenix City Court can order you to abate a noise. Disobeying is a class 1 misdemeanor.

14. Dogs

If you own or are in control of a dog, you must keep your dog on a leash in all public places in the City of Phoenix. Dogs are only allowed off-leash in designated dog parks.²⁵

Penalty: Allowing your dog to go off-leash is a class 1 misdemeanor.

15. Littering

You may not dispose of trash, debris, or human or animal waste on public or private property. You may only place trash in trash cans and other places designated by the City of Phoenix for removing trash.²⁶

Penalty: This is a class 1 misdemeanor. Additionally, if the City removes trash which you placed on public or private property, you may have to pay for the cost of the removal.

²⁴ P.C.C. §23-11 *et seq.*

²⁵ P.C.C. §8-14(A).

²⁶ P.C.C. §23-47.3.

16. Panhandling and Solicitation

Panhandling or “solicitation” is asking a person for money or asking them to buy goods or services from you. You can solicit verbally (by asking out loud) or with a sign. In most parts of the City of Phoenix, solicitation is legal. However, “aggressive solicitation” is illegal in all parts of Phoenix. You commit aggressive solicitation if you do one or more of the following things while you are soliciting someone:

- You continue soliciting the other person, from a distance of 10 feet or less, after they verbally ask you to stop.
- You touch the person without their consent.
- You follow the person in a way that intimidates them or makes them fear bodily harm.
- You physically block the person’s path, or make them change their path or the path of their vehicle, in order to avoid running into you.
- You use obscene or abusive language or gestures with the person.
- You solicit the person within 15 feet of an ATM or the entrance or exit of a bank.
- You solicit the person on a bus, on a train, or within 10 feet of a bus or train stop.
- You verbally solicit the person at night.²⁷

There is an important exception to the part of the law which bans soliciting at night. You may stand, sit, or perform music in a public place at night with a sign that requests donations. However, you may not verbally request money from people while you are soliciting at night, except if they speak to you first.

Additionally, the City of Phoenix has made “soliciting from a vehicle” illegal. This means that you may not stand on or next to a street or highway and solicit employment, business or contributions from occupants of any vehicle.²⁸

Penalty: Aggressive solicitation and soliciting from a vehicle are class 1 misdemeanors. If you are convicted of aggressive

²⁷ P.C.C. §23-7(A)(1) “Aggressive manner”, P.C.C. §23-7(B).

²⁸ P.C.C. §36-131.01.

solicitation or soliciting from a vehicle, the court can also order you to do community service.

17. Alcohol – Open Container Law, Drunk and Disorderly
State law says that you may not possess an open container of alcohol in the street or in any public place without the permission of the owner. You may not possess or consume alcohol in a park in the City of Phoenix, even though it may be legal in some other cities in Arizona.²⁹

It is a class 1 misdemeanor to appear in public in a drunk or disorderly condition, regardless of whether you have a container of alcohol with you.³⁰

Penalty: Possession of an open container of alcohol is a class 2 misdemeanor, except that possession of alcohol in a park is a class 1 misdemeanor. Being drunk in public is a class 1 misdemeanor.

18. Smoking

State law says that you may not smoke in any enclosed public place, except in a designated smoking area.³¹ This includes buses and trains, but does not include bus stops and train stations.

Penalty: Smoking in a place where smoking is prohibited is a petty offense. You can be required to pay a fine of no less than \$50 and no more than \$300.

19. Public Parks

Entering a Closed Park. You may not enter or remain in a park at a time when the park is closed to the public. Similarly, you may not enter or remain in an area in a park which is blocked by a fence or natural barrier, or which a map or sign says is closed for public use.³²

²⁹ A.R.S. 4-244-20, P.C.C. §24-38(B). The exception is that you may possess and consume beer in a park if you have a permit from the Department of Parks and Recreation. P.C.C. §24-38(C).

³⁰ P.C.C. §23-6.

³¹ A.R.S. 36-601(K).

³² P.C.C. §24-36.