

TRLA

Texas RioGrande Legal Aid



Street Smart Austin: Know Your Rights!



Street Smart Austin:
Know Your Rights!

This is the first publication of Street Smart Austin. It has been prepared by Legal Aid for the Homeless and Texas C-BAR, which are projects of Texas RioGrande Legal Aid.

We have developed this booklet to provide useful information about laws that may affect people who are homeless in Austin, Texas. Specific questions and incidents can be addressed by contacting Legal Aid for the Homeless at ARCH, 500 E. 7th St., Austin, TX 78701 or (512) 305-4100.

This document is not a substitute for the advice of an attorney. The materials and information contained in this document may not reflect the most current legal developments.

Thanks to everyone who contributed ideas and reviewed drafts of this booklet including House the Homeless, Inc., University of Texas Criminal Defense Clinic, Austin Police Department, and special thanks to Bill Allison, CJ Good, and Jay Leech for pulling it all together. If you have suggestions or corrections, please contact info@texasbar.org.

This guide is made possible through a generous donation from NuStar Energy.



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1.1 Sitting, Lying Down or Blocking a Sidewalk or Public Access Way

1.2 Downtown Area Business Map



1.3 Austin city ordinances and state law say that **after being notified or warned by a police officer of the rules**, it is illegal to continue to do the following in the area shown above (except for the campus of the University of Texas):

- Be asleep outdoors;¹ or
- Sit or lie down in the right-of-way between the roadway and the property line, building, or object placed in that area.²

1.4 Note: This ordinance pertains to the area within the boundaries indicated in the above map: east of North Lamar Blvd., south of East Dean Keeton, west of IH 35, and north of Cesar Chavez.

¹ Austin City § 9-4-14 (D)(1)

² Austin City § 9-4-14(D)(2)

1.5 Exceptions to the sitting, lying and sleeping laws:³

- Experiencing a medical emergency;
- Using a wheelchair because of disability;
- Buying something from someone on the sidewalk;
- Sitting on a public chair or bench;
- Sitting in a bus stop zone waiting for transportation;
- Standing in line to buy tickets or attend a public event; or
- Participating in or watching a parade or demonstration.

1.6 Penalty: Class C misdemeanor, which is a fine up to \$500.

2.1 Jaywalking

- If there is a crosswalk nearby, you must use a crosswalk.⁴
- When crossing the street, you must cross in a straight line, not diagonally.⁵
- If there is a sidewalk near you, you must use the sidewalk and not walk in the street.⁶

2.2 Penalty: Between \$1 and \$200.⁷

3.1 Loitering

3.2 Austin city ordinances that say you may not loiter if you intend to or engage in prostitution.⁸

3.3 A peace officer may arrest a known drug dealer who loiters in a public place under circumstances that appear that the person intends to sell illegal drugs.⁹

3.4 Note: The officer may not arrest the person without an opportunity to explain what they are doing.¹⁰

3.5 Penalty: Class C misdemeanor.

³ Austin City Code § 9-4-14(E)

⁴ Transportation Code § 552.005(b)

⁵ Transportation Code § 552.005(c)

⁶ Transportation Code § 552.006(a)

⁷ Transportation Code § 542.401

⁸ Austin City Code § 9-4-16

⁹ Austin City Code § 9-5-62

¹⁰ Austin City Code § 9-5-63

4.1 Criminal Trespass¹¹

4.2 You commit criminal trespass when you:

- Enter onto another’s property without permission and
 - * There is a “No trespassing” sign; or
 - * Stay on the property after someone tells you to get off.

4.3 Penalty: Class B misdemeanor, which may be punished by a fine up to \$2,000 and/or 180 days in jail.

5.1 Criminal Mischief

5.2 You commit criminal mischief when you do the following to someone’s property without their permission:¹²

- Destroy;
- Tamper; or
- Make markings, inscriptions or drawings.

5.3 Penalty: Ranges from a Class C misdemeanor to a felony of the first degree depending on value of property destroyed or vandalized.

6.1 Disorderly Conduct

6.2 You may be charged with disorderly conduct if you:¹³

- Use vulgar language that will cause a “breach of the peace” (i.e. violence);
- Make a gesture or display that will cause a “breach of the peace”;
- Create an unreasonable odor or smell;
- Abuse or threaten someone in an offensive manner;
- Make too much noise;
- Fight with someone;
- Enter private property and look into someone’s window;

¹¹ Texas Penal Code § 30.05

¹² Texas Penal Code § 28.03

¹³ Texas Penal Code § 42.01

- Go into a public bathroom or shower stall and look at someone; or
- Interrupt an “Authorized Activity” in a public park (wedding, concert, etc.).¹⁴

6.3 Penalty: Class C misdemeanor.

6.4 If you expose your anus or genitals, you could be charged with disorderly conduct. However, if you expose your anus or genitals for sexual gratification or arousal, you will be cited for indecent exposure.¹⁵

6.5 Penalty for indecent exposure: Class B misdemeanor.

6.6 While riding on city buses, you may not:

- Play radios or musical instruments;
- Use profanity or vulgar language when talking with the bus driver; or
- Ride the bus without shirt or shoes.¹⁶

6.7 Penalty: A person may be removed from bus with the possibility of permanently losing bus-riding privileges.

7.1 Public Lewdness

7.2 It is illegal to have the following in a public place:¹⁷

- Sexual intercourse; or
- Any sexual contact, which is touching another’s genitals or breast in order to arouse.

7.3 Penalty: Class A misdemeanor, which may be punished by a fine up to \$4,000 and/or one year in jail.

8.1 Assault

8.2 You commit assault when you:¹⁸

- Cause an injury to another or your spouse.
- Threaten to injure another person or your spouse.
- Cause contact you know the other person will find offensive.

¹⁴ Austin City Code § 8-1-11

¹⁵ Texas Penal Code § 21.08

¹⁶ http://www.capmetro.org/riding/safe_riding.asp

¹⁷ Texas Penal Code § 21.07

¹⁸ Texas Penal Code § 22.01

8.3 Penalty: Causing an injury is a Class A misdemeanor. Threatening injury or offensively touching someone is a Class C misdemeanor. If you live with or are related to the victim, the penalty could be increased because it may be classified as domestic assault.

8.4 Penalty for domestic assault: The first offense is a class A misdemeanor. Subsequent convictions are third degree felonies, which may be punished by a fine up to \$10,000 and between two to ten years in jail.

9.1 Weapons

9.2 Texas state law defines an “illegal knife” as a:¹⁹

- Knife with a blade over five and one-half inches;
- Hand instrument designed to cut or stab another by being thrown;
- Dagger, including but not limited to a dirk, stiletto and poniard;
- Bowie knife;
- Sword; or
- Spear.

9.3 Texas state law says that it is illegal to carry the following on or near you²⁰ (in your pocket, pants, glove compartment, etc.):²¹

- Handgun;
- Illegal knife; or
- Club
 - A club is defined as:
 - * Blackjack
 - * Nightstick
 - * Mace
 - * Tomahawk

9.4 Penalty: Class A misdemeanor.

9.5 A person may not enter city premises with a concealed or unconcealed firearm.²²

¹⁹ Texas Penal Code § 46.01

²⁰ The penal code states “about his person,” where “about” has been defined as “near by, close at hand, convenient of access, and within such distance of the person in question that the person

could, without materially changing position, place a hand on the weapon,” Courtney v. State, 424 S.W.2d 440 (Tex. Crim. App. 1968).

²¹ Texas Penal Code § 46.02

²² Austin City Code § 9-6-2

9.6 Penalty: Class B misdemeanor.

10.1 Sleeping and Camping

10.2 The “No Camping Ordinance”²³ says you may not camp in a public area that is not designated as a camping area. The following could be seen as camping:

- Dig a hole or build a fire outside of an authorized area (fire pit or grill);
- Store personal belongings; or
- Carry on cooking activities;
- Make a camp fire; or
- Use a tent, vehicle or other structure for a living accommodation.²⁴

10.3 Places where you may sleep:

- On private property with permission.
- On public property anytime except in a park during curfew hours²⁵ or after you’ve been warned by a police officer.

10.4 Note: A police officer does not need to warn you to leave before giving you a ticket under the “No Camping Ordinance”.

10.5 Penalty: Class C misdemeanor.

11.1 Urinating or Defecating in Public

11.2 Austin city ordinances say you may not urinate or defecate:

- In public view.
- On public property (i.e. streets, alleys, sidewalks).²⁶

11.3 Note: Restrooms in restaurants and nongovernmental buildings can be reserved for customers only.

11.4 Penalty: Class C misdemeanor.

²³ Austin City Code § 9-4-11

²⁵ Austin City Code § 8-1-14

²⁴ An officer may look at the totality of circumstances to decide that “camping” is taking place. See § 9-4-11

²⁶ Austin City Code § 9-4-15

12.1 Bathing

12.2 Austin city ordinances say you may not:

- Take a bath in a public fountain or public reservoir.²⁷
- Swim or bathe in Lady Bird Lake (Town Lake).²⁸
- Bathe in Barton Springs if a staff member tells you to stop.
- Use water from a public water source.²⁹

12.3 Penalty: Class C misdemeanor.

13.1 Panhandling or Begging

13.2 Note: These laws change frequently.

13.3 Panhandling (or soliciting for money) is legal in some areas of the city of Austin as long as the panhandler does not become aggressive.

13.4 Panhandling is prohibited between 7:00 p.m. and 7:00 a.m. in the downtown central business district, shown in the map on page 3.³⁰

13.5 Other places panhandling is prohibited:

- At a bus, bus station or stop, or a place for transportation.
- Within 25 feet of an ATM, bank, or check cashing business.
- At a marked crosswalk.
- On a block with a school or child care facility.

13.6 Aggressive panhandling³¹ is illegal. Aggressive panhandling occurs when you:

- Touch another person during the panhandling or begging.
- Follow the person if it causes that person to fear for injury or robbery.
- Continue to beg within five feet from a person when that person has indicated they are not interested.

²⁷ Austin City Code § 9-4-17

²⁸ Austin City Code § 8-5-48

²⁹ Austin City Code § 9-4-17

³⁰ Austin City Code § 9-4-13(C)(7)

³¹ Austin City Code § 9-4-13 (C)

- Get in the way of a person (or vehicle) so that they have to change directions to avoid hitting you.
- Use obscene (nasty) or abusive (cruel) language or gestures toward the person you are asking for money.
- Act in a threatening manner towards someone.

13.7 Penalty: Class C misdemeanor.

14.1 Panhandling from Vehicles

14.2 Austin city ordinances prohibit a person who is in a roadway from soliciting money or employment from occupants of vehicles.³²

14.3 You may never panhandle, ask for work, or sell objects while in a roadway.³³

14.4 Penalty: Class C misdemeanor.

14.5 Stepping into the following roadways is prohibited under all circumstances.³⁴

- IH 35
- MoPac Expressway (Loop 1)
- U.S. Highway 290
- U.S. Highway 183

14.6 Penalty: Class C misdemeanor.

15.1 Asking for Work

15.2 You may ask occupants of a car or truck for work when:

- You are at the Work Corner at 51st and IH 35 or the Work Corner at 2201 E. Ben White Blvd.³⁵
- In a private parking lot unless there is a sign stating (in both Spanish and English) that it is a misdemeanor to engage in solicitation for employment.³⁶

³² Austin City Code § 12-1-27(D)

³³ Texas Transportation Code § 552.007

³⁴ Austin City Code § 12-1-26

³⁵ Austin City Code § 12-1-27(F)(1)

³⁶ Austin City Code § 12-1-27(F)(2)

15.4 Penalty: Asking for work on a roadway outside this area is Class C misdemeanor.

16.1 Prostitution

16.2 Prostitution is defined as offering, agreeing, or engaging in sexual conduct for a fee.³⁷

16.3 Penalty: First offense is a Class B misdemeanor. Second or third offense is a Class A misdemeanor. A fourth offense is a state jail felony.

16.4 Austin city ordinances prohibit a known prostitute from loitering in a public place for the purpose of engaging in prostitution.³⁸

16.5 A person may violate this ordinance if they repeatedly stop or attempt to talk to people walking by or flagging down a vehicle.

16.6 An officer may not arrest the person without giving them an opportunity to explain what they are doing. See also Section 3: Loitering.

17.1 Public Park Rules and Curfews

17.2 Alcohol is prohibited at all times (unless you obtain a permit) in the following downtown area parks:

- Barton Creek Greenbelt East/West
- Bull Creek Greenbelt Lower/Upper
- Palm Park
- Rosewood Park
- Waller Creek Greenbelt
- Waller Creek Metropolitan Park
- Waterloo Park
- Wooldridge Square
- Zilker Metropolitan Park

17.3 Note: This list is not exclusive. There are many more parks where alcohol is prohibited.

³⁷ Texas Penal Code § 43.02

³⁸ Austin City Code § 9-4-16

17.4 An alcohol permit is very difficult to obtain and is reserved only for special occasions (weddings, concerts, etc.).³⁹

17.5 You may not be in a park between 10 p.m. and 5 a.m.,⁴⁰ except if there is an event, you have a camping permit, or have a permit to be there after hours.

17.6 Some other restrictions in public parks:

- Do not sell food or drink⁴¹ or any other item in the parks without a permit.⁴²
- Do not build a fire unless in a designated area. Camp stoves and BBQ grills may be used only in certain areas.⁴³
- Camp only with a permit and in certain areas.⁴⁴

17.7 Penalty for code violations: You will be asked to stop what you are doing and could be asked to leave the park. If you are in the park past curfew, you could be cited for criminal trespass.

17.8 Penalty for criminal trespass: Class B misdemeanor.

18.1 Glass Containers

18.2 Austin city ordinances say you may not carry any glass container in the following areas:⁴⁵

- A recreation building or outdoor area (a field, playground, or parking lot);
- All or part of a park, playground, or nature preserve;
- The playing area or dugout area of an athletic field;
- A school district/playground area;
- A lake, river, stream, shoreline, or beach; or
- the areas listed in Section 19.5 of this booklet.

³⁹ Austin City Code § 8-3-5

⁴⁰ Austin City Code § 8-1-14

⁴¹ Austin City Code § 8-3-3

⁴² Austin Park Police § 1.06

⁴³ Austin Park Police § 1.15

⁴⁴ Austin Park Police § 1.16

⁴⁵ Austin City Code § 9-4-12

18.3 Penalty: You will be asked to discard the glass or leave the area and a fine not less than \$1.

18.4 Exceptions:⁴⁶

- Baby bottles for babies;
- Prescription drug containers;
- Glass-lined vacuum picnic containers or thermos bottles; or
- Sitting at a sidewalk cafe, your residence, or a friend's residence.

19.1 Alcoholic Drinks and Controlled Substances

19.2 Austin city ordinances say you may not drink or hold any alcoholic beverages in any public place on Sunday between 2:15 a.m. and noon or Monday through Saturday between 2:15 a.m. and 7:00 a.m.⁴⁷

19.3 Penalty: Class C misdemeanor.

19.4 Austin city ordinances say you may not drink alcoholic beverages on property of the Austin Water Utility if a sign is posted prohibiting the consumption of alcoholic beverages.⁴⁸

19.5 Austin city ordinances say you may not drink alcoholic beverages on the sidewalk, public street, or parks located in the following general areas:⁴⁹

- In downtown Austin between Martin Luther King Blvd, IH 35, Lady Bird Lake (Town Lake), and Lamar Blvd;
- In central east Austin between IH 35, 13th Street, Airport Blvd to Webberville/Chicon and Holly Street;
- In south central Austin between Lady Bird Lake (Town Lake), Dawson/South 5th Street, Oltorf, and Congress;
- In the UT area between Martin Luther King Blvd, Guadalupe, 29th Street, and Rio Grande Street;
- In the Riverside area between IH 35, East Riverside and Lakeshore Blvd, Pleasant Valley Road, and Woodland Avenue; and

⁴⁶ Austin City Code § 9-4-12

⁴⁸ Austin City Code § 4-9-11

⁴⁷ Austin City Code § 4-9-9

⁴⁹ Austin City Code § 4-9-1

- In the Montopolis area between Montopolis, Grove Blvd and Ponca Street, Vargas Road, and 183.

19.6 Penalty: Punishable by a fine of at least \$1.⁵⁰

19.7 Note: You may NEVER drink alcohol within 1,000 feet of a pre-K, elementary, junior high, or senior high school.⁵¹

19.8 Penalty: Class C misdemeanor.

19.9 Note: A city may prohibit the possession of an open container or consumption of an alcoholic beverage on public property, within 1,000 feet of a homeless shelter or substance abuse treatment center.⁵²

19.10 Note: Public intoxication is a state crime.⁵³

19.11 Penalty: Class C misdemeanor. If you are under 21, not a child, and have been convicted twice before, then you can be fined between \$250 and \$2,000 AND sentenced to jail for 180 days.⁵⁴

19.12 Austin city ordinances say you may not ask another person to buy or sell a prohibited controlled substance.⁵⁵

19.13 Austin city ordinances prohibit sales of aerosol paint or glue to a person under 17 years of age.⁵⁶

19.14 Austin city ordinances prohibit the sale of nitrous oxide to a person under 19 years of age.⁵⁷

19.15 Penalty: Class C misdemeanor. Punishable by a fine of not less than \$200 or more than \$2,000.

19.16 Note: See also Section 3: Loitering.

⁵⁰ Austin City Code § 4-9-12(C)

⁵¹ Alcoholic Beverage Code § 101.75

⁵² Alcoholic Beverage Code § 109.36

⁵³ Texas Penal Code § 49.02

⁵⁴ Alcoholic Beverage Code § 106.071

⁵⁵ Austin City Code § 9-5-11

⁵⁶ Austin City Code § 9-5-22

⁵⁷ Austin City Code § 9-5-41

20.1 Littering

20.2 Austin city ordinances say you cannot throw litter, including garbage, clothes, paper, or ashes, on a street, alley, sidewalk, vacant lot, or public property.⁵⁸

20.3 Penalty: Class C misdemeanor.

21.1 Smoking

21.2 Austin city ordinances say you cannot smoke in a public space, inside a workplace, or within 15 feet of an entrance of an area where smoking is prohibited, which includes all city facilities.⁵⁹

22.1 Dealing with a Police Officer

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

22.2 Texas state law says you may not:

- Refuse to give your name, address,⁶⁰ or date of birth when asked by a police officer after you have been arrested.⁶¹
 - * **Penalty:** Class C misdemeanor
- Give a false name, address, or date of birth to a police officer after you have been arrested, stopped (detained), or if you are a witness to a crime.⁶²
 - * **Penalty:** Class B misdemeanor
- Leave a police officer who is trying to arrest or stop (detain) you.⁶³
 - * **Penalty:** Class B misdemeanor
- Prevent or obstruct a police officer or a person under the police officer's direction if they are trying to arrest, search, or transport you or someone else.⁶⁴
 - * **Penalty:** Class A misdemeanor

58 Austin City Code § 10-5-42

59 Austin City Code § 10-6-2

60 If you are homeless, you may say you do not have an address.

61 Texas Penal Code § 38.02(a)

62 Texas Penal Code § 38.02(b)

63 Texas Penal Code § 38.04

64 Texas Penal Code § 38.04

- Hinder, hide, or help someone who is being arrested or detained by a police officer.⁶⁵

* **Penalty:** Class A misdemeanor

22.3 You have the right:

- After you have given the police officer your name, address, and date of birth, you have the right not to answer a police officer's questions even if you are only a witness to a crime.⁶⁶
- You have a right to stop answering questions, even if you have already answered some of a police officer's questions.
- You have the right to object to a search by a police officer,⁶⁷ but do not physically resist the police officer's arrest.
- You have the right to be free from excessive force.⁶⁸
- You have a right to ask a police officer and be told his or her name and badge number.⁶⁹

22.4 How do you know when you are under arrest?

- You may be under arrest without the police officer saying the word "arrest."
- You are arrested when the police officer takes you into custody or deprives you of freedom of movement in any significant way.⁷⁰
- A police officer may detain you without arresting you. The officer may detain you if he suspects you may be involved in criminal activity. After a temporary detention, a police officer must either arrest you or let you go.
- If you are not sure, ask the police officer if you are under arrest and why!

22.5 A police officer has the right to administer a "pat down" if he/she has a reasonable belief that you are carrying weapons.⁷¹

22.6 Austin city ordinances say you cannot refuse to comply with an order of a police officer.⁷²

22.7 Austin city ordinances say you cannot interfere with a police officer carrying out his or her duties.⁷³

⁶⁵ Texas Penal Code § 38.03

⁶⁶ Texas Penal Code § 38.05

⁶⁷ U.S. Const. 5th Amendment

⁶⁸ U.S. Const. 4th Amendment

⁶⁹ internal police policy

⁷⁰ "If You Are Arrested," State Bar of Texas

⁷¹ Terry v. Ohio, 392 U.S. 1 (1968)

⁷² Austin City Code § 9-4-51

⁷³ Austin City Code § 9-4-51

22.8 If you are under arrest, you cannot refuse to give a police officer your correct name and address. You also cannot give a police officer a false name or address.⁷⁴

23.1 Warrants

23.2 A warrant is an order from a judge instructing the police to arrest an individual accused of violating a law(s).

23.3 If you fail to make a plea to each violation on a ticket within 30 days, the court will:

- issue a warrant;⁷⁵
- charge the standard fine plus \$50; and
- send a request to the Texas Department of Public Safety for Denial of Drivers License or Identification Card.

23.4 Note: Tickets are not always turned in to the court in a timely fashion. You must continue to show up in court and attempt to make a plea.

23.5 If there is a warrant for your arrest, a police officer may stop and arrest you even if the police officer has not witnessed you doing anything illegal.

23.6 You can call the following phone numbers to find out if there is an outstanding warrant for you:

Community Court (512) 974-4879

Municipal Court (512) 974-4800

Travis County Court (512) 854-9000

24.1 Community Court

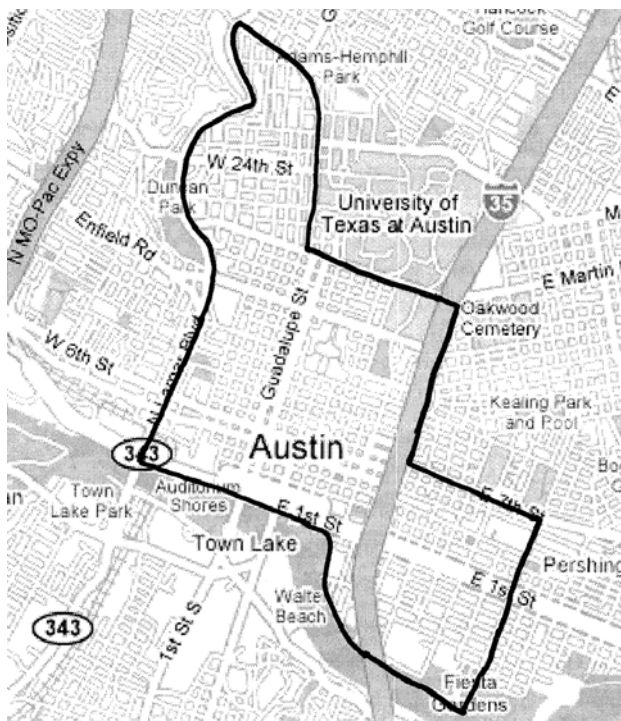
24.2 Non-traffic Class C misdemeanor or City Code offenses committed in downtown, east Austin, and

⁷⁴ Austin City Code § 9-4-51

⁷⁵ Texas Code of Criminal Procedure § 15.01

campus areas shown below⁷⁶ should be tried in Community Court.⁷⁷

24.3 Community Court Case Map



24.4 Downtown Community Court is located at **719 E. 6th Street**. It operates from 8 a.m. to 5 p.m. Monday – Friday.

25.1 Reporting Police Misconduct⁷⁸

25.2 You may be the victim of police misconduct if a police officer inappropriately uses force and inflicts harm on you. All police misconduct should be reported.

25.3 If you are a victim of police misconduct, please follow these steps:

1. Immediately after the incident contact Legal Aid for the Homeless. The staff will help you put the events down on paper.
2. Contact the Office of Police Monitor or Internal Affairs to file your report.

⁷⁶ <http://www.ci.austin.tx.us/comcourt/overview.htm>

⁷⁷ Austin City Code & 2-10-32

⁷⁸ <http://www.ci.austin.tx.us/police/ia.htm>

25.4 Office of Internal Affairs
Office of Police Monitor
1106 Clayton Lane #100E
Austin, TX 78723

(The office is in the “Twin Gold Towers.”)

Main Number: (512) 974-9090

Officer Misconduct: (512) 974-5200

25.5 A complaint should be filed within the first 30 days after the incident.

Legal Aid for the Homeless
500 E. 7th St.
Austin, TX 78701
(512) 305-4100



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Texas RioGrande Legal Aid

To apply for legal services or to make referrals, contact:

Austin Office

4920 North IH 35

Austin, TX 78751

Phone: (512) 374-2700

Toll-free: (800) 369-0574

Fax: (512) 447-3940

For local contact information visit our web site:

www.trla.org



Legal Aid for the Homeless

500 E. 7th St.

Austin, TX 78701

(512) 305-4100