

October 13, 2010

**A.R.S. 28-815(A) - The Most Incorrectly Used Citation:
Riding a Bicycle in a Crosswalk
IS
Permissive and Lawful in Arizona.**

I was recently asked if cyclists had to ride a particular direction in crosswalks or if it was illegal to ride in a crosswalk. Also, on October 3, 2010, KVOA reported on the crosswalk citations issued by the University of Arizona Officer Bermudez as saying that "riding ... through crosswalks ... will also cost the bike riders." This press announcement is incorrect.

Cyclists are not pedestrians, so the crosswalk laws do not expressly include cyclists for crosswalk safety. However, neither do they exclude cyclists. So we need to look at other factors to analyze and answer this question.

Arizona Revised Statute 28-815 (A) imposes a duty on bicycle riders to move to the right side of the roadway when they are riding slower than traffic. It follows the same theme of roadway use that has been in effect for 100 years, that is, faster traffic to the left, slower traffic to the right.

This statute is being used by our law enforcement when bicycle riders are in a crosswalk and riding in a direction that is opposite to the adjacent flow of traffic. It is not used when a bicycle riders are riding in a crosswalk in a direction that is with the adjacent flow of traffic. There are several reasons why A.R.S. 28-815 (A) should not be used for crosswalks.

1. Crosswalks are bi-directional. A.R.S. 28-795 clearly recognizes that crosswalks are bi-directional.
2. In the 1980 Arizona Supreme Court case of Maxwell v. Gossett, the Court wrote,

A.R.S. § 28-815(A)

This statute requires that bicycles must be ridden on the right side of the road or with the traffic. [The rider] was riding his bicycle in the crosswalk at the intersection. Whether he had been operating the bicycle on the left side, contrary to the statute, before he entered the crosswalk, whether he intended to continue operating his bicycle on the roadway, contrary to statute, after he left the crosswalk, or even whether he intended to ride his bicycle on the available sidewalk ..., is immaterial as to whether he was negligent while riding his bicycle in the crosswalk.

...

Finally, defendants contend that by this statute, A.R.S. § 28-812, the automobile traffic laws apply to persons riding bicycles, and that, when read with A.R.S. § 28-831 defining safety zones and A.R.S. § 28-602(2) which defines crosswalks, it is unlawful to ride a bicycle in a crosswalk. We agree that this section generally applies the same traffic laws to riders of bicycles as it does to drivers of motor vehicles. The statute excludes, however, provisions "which by their nature have no application." *We do not read the cited statutes as prohibiting the riding of a bicycle in a cross-walk.*

...

We note also that some courts have held that a crosswalk is not a part of the roadway for the purposes of the statute. *[Emphasis added]*

In short, the Arizona Supreme Court did not make 815(A) applicable to crosswalks and it is NOT illegal to ride in them.

3. On June 8, 1998, the City Attorney authored a letter concluding that, "In any event, it is apparent that under the present state of the law in Arizona a bicyclist is not prohibited from riding on or across a crosswalk at an intersection nor upon a marked crosswalk connecting the extension o a bicycle path." The letter is available on the internet. Google "Bill Whitman 1998

Arizona.” Please note that in the Stanton letter and in the Maxwell case, A.R.S. 28-812 refers to the duties of the driver of a “motor vehicle.” The current statute does not use the word “motor” and only refers to the duties of the driver of a vehicle. This is important because vehicle and motorvehicle statutes are substantially different bodies of law and motorvehicle statutes do not apply to cyclists.

4. When a collision occurs and a motorist has violated several statutes (duty to stop at a stop sign, duty to remain stopped until safe to proceed, duty to make a safe right turn, failure to control speed to avoid a collision, may not turn right until safe to do so, may not turn left until safe to do so) very often law enforcement will cite the motorist if the rider was riding with the flow of the adjacent traffic and will not issue these citation if the rider was using the crosswalk the other way. The problem is that the motorist is still in violation, the cyclist is not, and shifting the “fault” to the cyclist lets the motorist off the hook for behavior that really should be corrected. Motorists are required to look BOTH WAYS before proceeding.

5. Law enforcement often attempts to perform “fault analysis” in the field rather than simply investigate and perform “violation analysis.” The former is a subject of debate that even attorneys and judges do not always agree on. The latter is a simple process that is fair and even handed for all. Law enforcement officers that attempt to engage in fault analysis and issue citations based on their view of this complex matter and lack of further investigation easily and often end up making the wrong decision. In the case of A.R.S. 28-815(A), the tendency is to take a law intended for one purpose (roadway traffic flow) and contort it to another purpose (making sidewalks unidirectional for bicyclists).

6. Think about how a crossing would be if A.R.S. 28-815(A) really were to be applicable to crosswalks? A rider with the flow of adjacent traffic would simply cross the intersection. A rider going the other way would have to turn right, cross, turn left, cross, turn left again, cross again, and turn right to be on their way. Certainly it makes no sense to let one rider go through and make another cross three times to continue their travel.

7. Law enforcement often misunderstand who causes collisions in a crosswalk. The analysis has nothing to do with direction. A rider can easily be hit no matter what direction they are going. This is addressed in the *Maxwell* case, above. The driver who fails to look to the right and steps on the gas pedal without seeing what is to be seen is the cause. So many drivers clear left and not right when entering roadways, or fail to come to a full stop (78 percent of motorists will not come to a full stop at a stop sign).

8. For three years, 2007-2009, the Tucson Pima County Bicycle Advisory Committee has read a substantial number of traffic crash reports in the Enforcement Subcommittee and released the information that A.R.S. 28-815(A) still continues to be the most wrongly used citation by law enforcement. I hope someday this will be corrected.

I hope this helps to understand that in Arizona, no citations should be issued to cyclists who ride in crosswalks. It is my hope that all citations that have been issued should be recalled and dismissed. All motorists who struck cyclists in crosswalks and were noted as “no improper action” be correctly cited for their failures. All cyclists who took a diversion class and used their one free pass per year for this citation should be allowed to re-use their diversion eligible status.

Very Truly Yours,

Eric Post