



Civil Traffic (and Marijuana) Hearings

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Courts



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Arraignment

- Plead **RESPONSIBLE** to the charge and send the appropriate sanction from the court's deposit schedule (**BOND CARD**) by mail.
- Attend court approved **DEFENSIVE DRIVING CLASS** (for moving violations only) after which the charge is dismissed.
- Plead **NOT RESPONSIBLE** and contest the citation in a **CIVIL TRAFFIC HEARING**
- **What if won't plead?**

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Dismissal of Charges

- No Proof of Insurance: ARS 28-4135(D) authorizes dismissal of 28-4135(B) & (C) charges only, not 28-4135(A)
- No license in possession: ARS 28-3169(B) authorizes dismissal with proof of a valid driver license at the time of violation
- Registration Violation: 28-2532 requires dismissal of registration violation if defendant obtains registration
- Registration Violation by non-owner: May suspend fine (code 10) 28-2532
- Per A.R.S. 28-1560(A), cancelling a traffic violation in a manner not authorized by law is a Class 3 misdemeanor.

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Dismissal of Speed Complaints

A.R.S. 28-707 requires that complaint for speed violations specify:

- Alleged speed of the Defendant and maximum speed applicable (Alleged and maximum speed not required for Failure to Control Speed to Avoid a Collision)
- Identification of the Defendant
- Date and time of incident
- Location of incident

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Civil Traffic and Marijuana Hearings

- Arizona Rules of Court Procedure for Civil Traffic, Boating, Marijuana, and Parking and Standing Violations apply
- Arizona Rules of Criminal Procedure apply only if there is a criminal traffic charge
- Service of complaint – look to Arizona Rules of Civil Procedure
- Time limits for filing a complaint – look to Arizona Revised Statutes Title 28

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Representation by State



- The State is not required to be represented by counsel. Rule 12.
- If the State wishes to be represented by a prosecutor it must inform the court and Defendant at least 10 calendar days before hearing, or within 10 calendar days of notice that the Defendant will be represented.
- The officer is a witness, not the prosecutor or a party to the case. The officer may not question witnesses or make legal arguments or objections. See Rule 2.

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Representation by Defendant

- The Defendant must notify the court and the state within 10 calendar days before civil traffic hearing that they will be represented. Rule 11.
- Failure to comply with rule means waiver of defendant's right to be represented.
- *What if defense counsel files Notice of Appearance on day of hearing?*
 - Force defendant to proceed without representation?
 - Let the attorney appear for defendant?
 - Continue the hearing in the interests of justice?

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Failure to Appear at Hearing

- If no witness for the State appears, court shall dismiss complaint unless court continues for good cause shown. Rule 21.
- If State's witness appears and defendant fails to appear, court shall enter a default judgment. Rule 22. Exception: active military service.
- If defendant fails to appear and no State's witness appears, court shall dismiss complaint. Rules 21 and 22.

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Pre-Hearing Discovery

- No pre-hearing discovery shall be permitted, absent extraordinary circumstances. Rule 13(a).
- Immediately before the hearing both parties shall produce for inspection any exhibits or recorded statements for inspection.
- If defendant requests a chance to see officer's notes during hearing, officer must show them. Rule 13(b).

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Order of Proceedings

Rule 19 :

- Direct, Cross, Redirect of State's witnesses
- Direct, Cross, Redirect of Defendant's witnesses
- Direct, Cross, Redirect of State's rebuttal witnesses, if any
- Direct, Cross, Redirect of Defendant's surrebuttal witnesses, if any
- Argument of parties if permitted by court
- Ruling by Court

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Audiovisual/Telephonic Appearances

- You may permit parties, attorneys, and/or witnesses to appear by audiovisual interactive means
- Request must be made at least 14 calendar days prior to hearing date
- Court may require requesting party to pay costs for hearing and Defendant to post bond for possible fine
- Rule 10.1 (d): If requested by Def, waives in-court ID
- Everyone must be able to see & hear all parties at same time
- Audio portion must be captured accurately on the court's official record
- Fax or email must be available to transmit exhibits and notice of right to appeal

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Documentary Hearings

- Rule 10.2; Approved forms are included in Rule 37
- Defendant must request in writing and must show substantial hardship
- Defendant shall file a written statement under penalty of perjury
- State witnesses may submit written statements under penalty of perjury once documentary hearing has been approved
- Both sides may submit exhibits
- Defendant waives rights, including:
 - Review of State's evidence, including officer's notes
 - To testimony under oath
 - To cross examine, present rebuttal, and to give closing argument
 - In court identification
 - Immediate delivery of notice of appeal
- Appeal time is extended to 21 days

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Testimony Under Oath

- The testimony of all witnesses must be given under oath. Rule 16(a).
- Defendants who cite a religious objection can be asked to affirm.
- Hearing officer can swear in all witnesses as a group at the beginning of hearing or each witness individually prior to his/her testimony.
- *What if you realize during a hearing that you forgot to administer the oath?*

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Questioning Witnesses

- The citing officer does not represent the State and cannot ask questions or make objections. Only a party, or an attorney for a party can. Rule 16(c)
- Juveniles? Parents cannot ask. Advisory Opinion 20-01
- Rule 2(i) contains the definition of “party” and a citing officer does not fall within that definition.
- Hearing officer can call and examine witnesses, including the defendant, on its own motion. Rule 16(b).
- When asking questions, hearing officer must remain neutral and avoid appearance of representing either side. Questioning is best restricted to asking for clarification of facts, issues.

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Use of Interpreters

- Due Process Right to have an interpreter provided if requested
- Reversible error if interpreter is not provided
- Judge cannot conduct proceedings in language other than English
- Recommend placing interpreter under oath at beginning of hearing:

“Do you solemnly swear or affirm that you will give a true and accurate interpretation of all words spoken in this hearing to the best of your training and ability?”

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Burden of Proof

- Preponderance of evidence
(more likely than not)

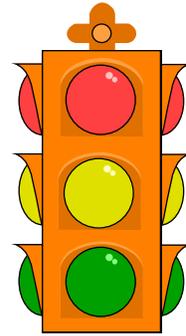


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Elements the State Must Establish

- Date
- Time
- Location
- Jurisdiction
- Identification
- Specific elements for the violation



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Elements

- If the State fails to prove the elements of the offense by a preponderance of evidence, you must find Defendant not responsible
- *What if the State misses an element? Do you prompt the State's witness?*
- *What if the defendant fails to address one of the charges? Do you prompt the defendant?*

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Admissibility

- Per Rule 17(a), the Arizona Rules of Evidence do not apply, except for privileged communications (marital, attorney/client, doctor/patient)
- Evidence must have “probative value”
- Judge determines relevancy. Rule 17(a).
- No objection is necessary – if a witness or the defendant is giving testimony that is irrelevant, the Court can advise the witness or defendant that the testimony is irrelevant and will not be considered.

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Hearsay

- An out of court statement offered to prove the truth of the matter asserted
- Since the Rules of Evidence do not apply in civil traffic hearings, hearsay is admissible. Rule 17.
- However, you may consider the amount of weight the statement should be given, and you may state on the record that you are doing so.

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Foundation

- *Investigating officer gives opinion on how collision occurred but did not witness collision*
 - What training and experience does officer have in accident investigation?
- *Photograph of vehicle or roadway is submitted but was taken one week after incident*
 - Does photograph fairly and accurately depict vehicle or roadway?
- *Calibration of radar unit*
 - Officer should provide testimony regarding when and how device was checked or calibrated

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Electronic Evidence

- Pictures or videos from cell phones/tablets
- Security camera footage
- Officer's body camera or dashcam footage
- Rule 29(b) states **all exhibits offered** at a hearing, admitted or not, are part of the appellate record
- Everything offered as an exhibit has to be in a format that the court can keep
- Special rules for proof of insurance shown on electronic device – see ARS 28-4135(B) & (F)

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Evidence: Discussion

- What do you do when a defendant wants to show you pictures on their cell phone?
- How about a video on their electronic tablet?
- How about their proof of insurance on a cell phone?
- What if Officer objects to exhibit?

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Conclusion of Hearing

- Advise parties that evidentiary portion of hearing is concluded and no further testimony or evidence will be heard
- Check with bailiff/clerk to ensure all exhibits have been marked and admitted
- Court gives its ruling
 - Findings of fact (the facts the Court believes have been proven based on the evidence presented)
 - Conclusions of law (apply facts to each charge listed in the complaint)

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Conclusion of Hearing

- Responsible finding
 - Enter the judgment and impose the appropriate fine. Rule 24(a).
 - Unless mandatory fine is required, fine can be any amount up to statutory maximum (\$250) plus surcharge and fees
 - Provide notice of right to appeal (Rule 25)
 - Report finding to MVD within 10 days
 - \$20 time payment fee
- Not responsible finding
 - Enter judgment and refund any deposits. Rule 24(b).
- Code 10 (or 20): Responsible but suspend fine (will get points)

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Issues

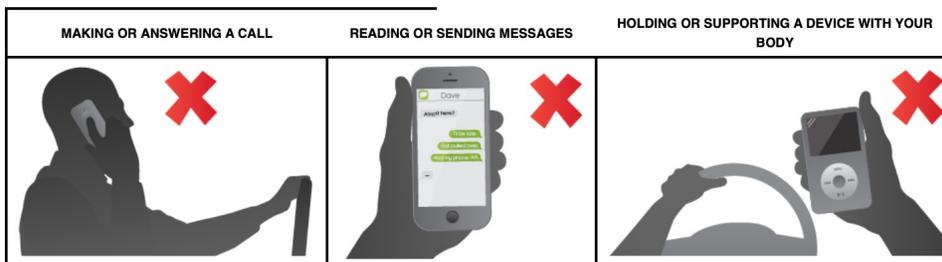
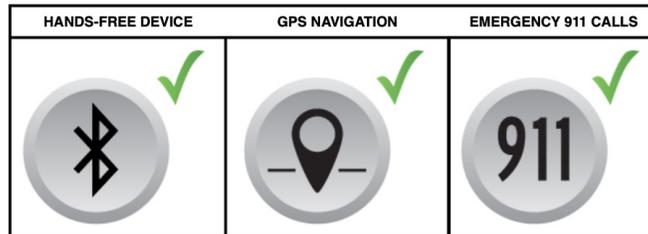


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Hands-Free Driving

- § 28-914(A)



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Under 21: Civil Marijuana Violations

- § 36-2853(B): For persons under 21 years of age, it is unlawful to Possess, consume, transport or transfer without remuneration one ounce or less of marijuana (no more than five grams of which can be marijuana concentrate)
- First violation - Civil Penalty of no more than \$100 to the Smart and Safe Arizona fund and court has discretion to order up to four hours of drug education or counseling
- No surcharges or other fees (other than time payment)
- Additional violations are criminal but must have allegation of priors filed by state

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Civil Marijuana Violations

- ARS 22-701, 702
- May be filed into Justice and Muni Courts with ATTC
- Civil Traffic HOs **MAY** handle
- Civil Traffic and Boating Rules apply (unless filed with criminal)
- LEO may alter ATTC to indicate civil violation
- Juvenile HOs may also handle (civil only)
- Defaults can go to FARE and TIP but not MVD
- **Best practice to give immigration advisory (Criminal Rule 17.2)**

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CDLs and DDS

- Commercial driver license holders are eligible for defensive driving school if:
 - Not driving a commercial vehicle
 - Vehicle not being used for commercial purpose
 - Otherwise meets DDS eligibility (no other violation w/i 1 year that DDS completed for)
- Once DDS completed, the violation would be reported to MVD as responsible but without points accruing

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What is Masking?

- ▶ 49 CFR§384.226 The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.
- ▶ The statutory prohibition of the masking of traffic offense convictions committed by CDL holders appears at 49 U.S.C. § 31311(a)(19)

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Masking Scenarios

- ▶ Defendant is charged with speeding @ 70 mph in 55 mph zone
- ▶ Defense Counsel moves to amend to a seat belt violation with agreed fine of \$250.00
- ▶ If you accept and amend, have you masked the offense?
- ▶ Would your answer change if the officer agrees with the defendant and states he/she has no issue with dismissing the charge?

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Civil Traffic Mitigation:

Can NOT be mitigated:

Diversion/DDS Surcharge 12-114 (Can do CR)
 \$13 Add'l Assessment 12-116.04 (Can do CR) *
 \$9 Victim Assessment 12-116.04 (Can do CR) *
 \$2 Victim Assessment 12-116.09 (Can do CR) *
 \$20 Time Payment Fee 12-116 (Can NOT do CR)

* These assessments are on the "fine." If no fine, no assessment.

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Community Restitution Rate

- Community service rate for criminal, civil and juvenile matters shall be the state minimum wage, rounded up
- Currently rounded up to \$13
- <https://www.azica.gov/labor-minimum-wage-main-page>
- For civil traffic, def must agree and court shall determine "location" BP: "Non-profit in Arizona"
- For insurance violations, if you want to mitigate the fine AND avoid suspension, need the MVR to avoid suspension

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New for Motorcycles!

- The operator of a two-wheeled motorcycle is permitted to overtake and pass another vehicle that is stopped in the same direction of travel in the same lane and to operate the motorcycle between the lanes of traffic on a street that is divided into at least two adjacent traffic lanes in the same direction of travel with a speed limit that does not exceed 45 miles per hour, if the motorcycle is traveling at a speed that does not exceed 15 miles per hour and the movement can be made safely.



**SB 1273 (effective
Sept 24, 2022)**

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Questions???



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