

# Fight Photo Radar!

*R&R Law Group's Definitive Guide to Protecting  
Your Rights, your Privacy & Your Record against  
Photo Radar in the State of Arizona*



Disclaimer: This e-book is written for informational purposes only and does not constitute legal advice. No attorney-client relationship is formed as a result of the distribution or receipt of this book. Every legal case is different and each case deserves an independent review by an experienced attorney. Failure to properly monitor a legal case or have an experienced attorney represent an individual in a manner may result in severe consequences, including a suspended license, court warrants, accruing fees and penalties and repercussion on your motor vehicle record.

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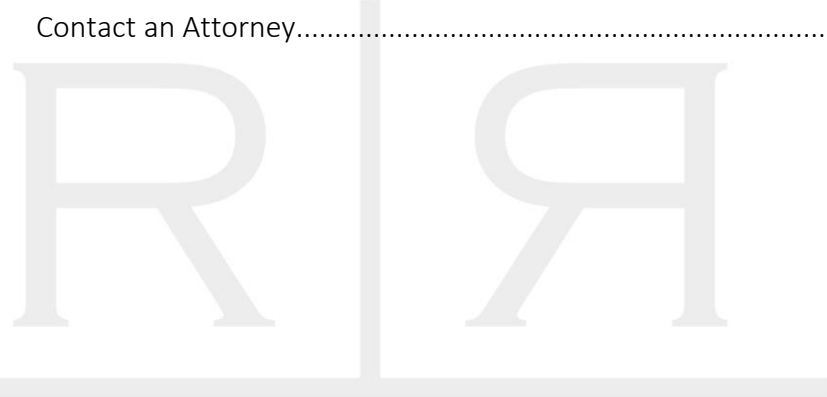
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## Chapter 1: Photo Radar's History and Overview in Arizona

Long-time residents of Arizona may remember the days when the major freeways in the Phoenix metropolitan area were riddled with photo radar cameras. That is no longer the case and speed cameras are now employed exclusively by local municipal or city governments.

The following cities have active photo radar programs as of the time of this writing (March 2016), starting those with the biggest programs to the smallest:

1. Scottsdale
2. Mesa
3. Phoenix
4. Chandler
5. El Mirage
6. Show Low
7. Star Valley
8. Green Valley
9. Eloy
10. Various other cities with small programs

There are two primary companies behind these photo radar campaigns: Redflex and American Traffic Solutions.

Both of these companies have contracts with city police departments to run the photo radar systems. Generally speaking, the companies have representatives of the corporation, not the police department, install and monitor the equipment. They calibrate the machines and maintain their operation. Reports are generated, and reviewed by the police departments who then sign a complaint which is then filed with the court. It is important to note the police department has little to no

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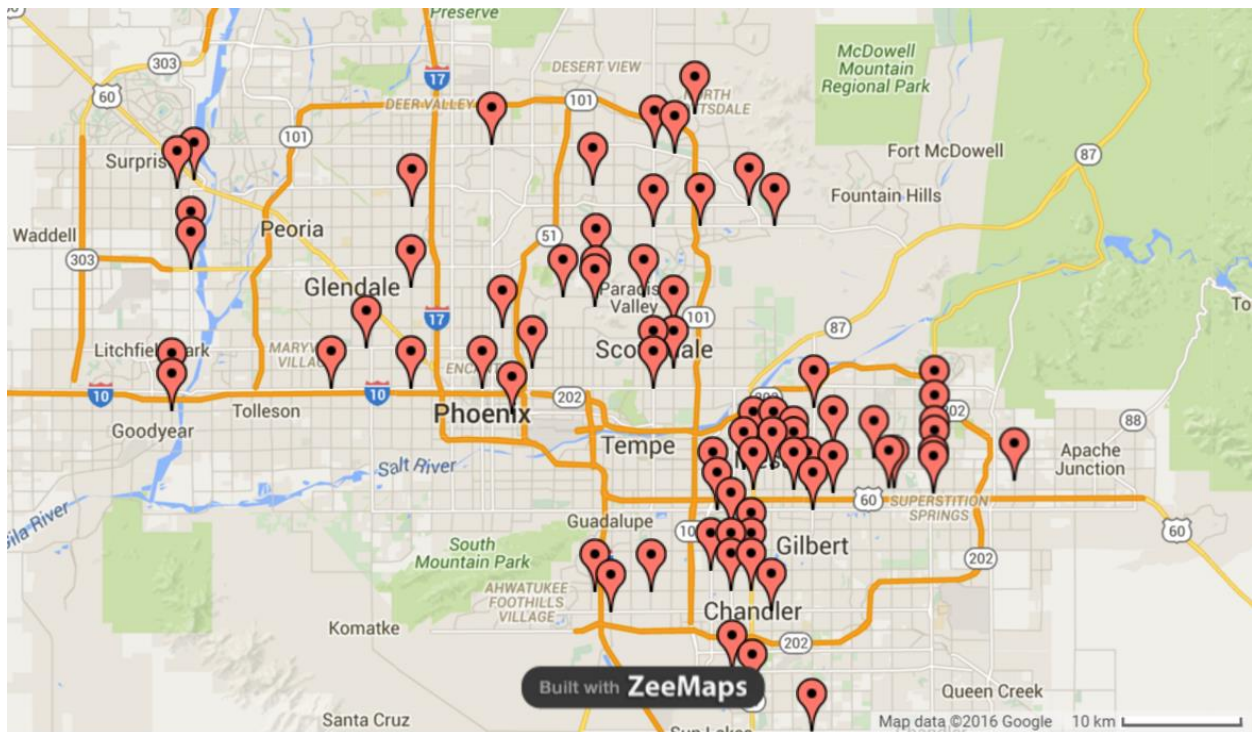
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involvement in installing the machines or maintaining them. They review data that is sent to them by these corporations and make a determination as to their accuracy.

### Photo Radar Locations in Maricopa County



For a full list of photo radar locations across the valley, visit our website at: <http://rllawaz.com/photoradar/>

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## Violations Types & Penalties

There are many variations of cameras that exist, from mounted poles to van, but they exist to write two primary citations: (1) speeding tickets and (2) red light tickets. Each violation has unique characteristics:

Speeding A.R.S. 28-701(a)	Red Light A.R.S. 28-645
<ul style="list-style-type: none"> <li>• 3-point violation</li> <li>• Fine increases with speed</li> </ul>	<ul style="list-style-type: none"> <li>• 2-point violation</li> <li>• Requires Traffic Survival School</li> <li>• Fixed Fine</li> </ul>

Driving records are unique and each violation may have differing consequences. It is important to do a comprehensive review of your record prior to making any decisions. An unofficial copy of driving records can be obtained at [www.servicearizona.com](http://www.servicearizona.com).

### Red Light Violations Are Serious!

Red light violations are very seriously penalized in Arizona. As the charge above shows, it is only a 2-point violation. However, a conviction for a red-light violation has other serious consequences, most namely, the requirement that you complete Traffic Survival School.

Traffic Survival School is a class that must take if you are actually convicted of a red light violation. This is different than Defensive Driving School, which is a PRE-conviction diversion program. This means that if you complete Defensive Driving School prior to paying your ticket or being convicted, your case will be dismissed. However, if you simply pay your ticket or you contest your ticket and you are found guilty/responsible, the Motor Vehicle Department will impose the very different penalty of requiring you to complete Traffic Survival School.

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Traffic Survival School is an 8-hour course that MUST be completed in person. This is different than Defensive Driving School, which can be completed online. The Arizona legislature requires people convicted of the following to complete Traffic Survival School:

1. Driving Under the Influence
2. Racing / Exhibition of Speed
3. Reckless Driving
4. Accumulating over 8 points in 1 year
5. Red Light Violations

This means that if you are convicted of a Red Light Violation, you will be in the same classroom as people who have been convicted of DUI, Reckless Driving and other serious traffic infractions! Simply for one red light violation, no matter how severe or how minor.

If you live out of State, you may have to travel back to Arizona to complete this Traffic Survival Course in person unless you can find an analogous court in your home state that Arizona will accept. This can be more difficult than you might imagine.

### **Line of Prolongation Matters, Not Cross Walk**

Many people convicted of a red light violation insist that they were in the intersection when the light turned red. And many times we would agree! The question becomes where the intersection begins, and there is disagreement about this issue in Arizona between attorneys, prosecutors, courts and judges.

We argue that the intersection begins at the beginning of the crosswalk. This makes sense logically, of course, because that is where you stop when the light is

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actually red. Common sense and a simple observation of driving behavior in Arizona and around the country (and world) shows people stopping before the crosswalk. This enables pedestrians to walk and gives plenty of room for other traffic perpendicular to the intersection to pass through the intersection without clipping cars stopped at the light.

Unfortunately, courts and judges often do not share this same definition of “intersection”. They consider the intersection to stop at what is known as the “line of prolongation” which is illustrated below.

This is often several feet past the crosswalk. This leads many people to believe they are driving lawfully when they are passed the crosswalk when the light turns yellow. Unfortunately, a driver may be in the crosswalk when the light turns yellow but not past the line of prolongation when the light changes red. This results in a violation even though the driver was performing a perfectly safe driving maneuver.

See the figures below for a better illustration of how these violations work.



Figure 1: How Scottsdale Defines an Intersection



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Figure 2: Actual Line of Prolongation



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## Chapter 2: First Defense - I got a citation – do I have to respond?

Generally speaking, there are three scenarios where people receive notice of a photo radar citation; they receive a notice of a violation, they receive a traffic ticket and complaint, or they are served with a traffic ticket and complaint. The underlined distinctions are very important and require different legal strategies.

### Notice of Violation: Do NOT Respond!

Many people receive what is called a Notice of Violation. This is not an actual traffic ticket, it is merely a notice that there has been an infraction and the police are looking for assistance in identifying the violator.

Under Arizona law, there is no obligation to respond to the Notice of Violation and no obligation to identify the driver. This scenario often presents itself when drivers have out-of-state driver's licenses and the Arizona Motor Vehicle Department ("MVD") cannot match the driver to a photograph.

In many cases, nothing develops from these notices unless an individual responds to the notice identifying either themselves or another individual. However, these situations should still be monitored to ensure that neither the court nor the police department are continuing investigation or seeking alternative methods of identification of the driver.



## “Traffic Ticket & Complaint” is an Actual Ticket

As it sounds, a Traffic Ticket & Complaint is an official citation and complaint that has actually been filed with the Court. The Court receives the complaint and assigns a court date for what is known as an arraignment. At an arraignment for a photo radar ticket, the Judge determines how a defendant would like to proceed, either by taking a Defensive Driving School if eligible, paying the citation, or setting the case to hearing a later date.

However, before determining how to respond to an actual complaint, the important question of whether or not the Court has authority to act must be answered. This leads to the question of whether the traffic ticket and complaint was actually served on the individual in question.

## Served Traffic Ticket and Complaint Requires Action

Letters are lost in the mail every day. Unless a person is personally served, or physically handed their ticket, there is no way for the Court system to know whether or not they as a defendant have proper notice that a complaint has been filed against them. Accordingly, most jurisdictions in Arizona serve their clients with photo radar tickets or engage in alternative methods of providing notice. The cities of Scottsdale, Mesa and Chandler are particularly aggressive when serving individuals.

The City of Scottsdale Prosecutor’s office also often asks the Court to grant them authority to engage in alternative service. When granted, the Court authorizes them to avoid having to physically hand you a document. Instead, they can post a notice of the citation on the door of your last known residence while mailing you a copy.

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## Do I have to respond?

If the Court believes it has jurisdiction over an individual, a response will be required to prevent the Court from taking action on its own. If the Court acts without an individual present, it is not in that individual's favor. When this happens, it is known as a default judgment. This means the individual loses and the Court suspends that individual's license.

If an individual is not represented by an attorney, it is critical to respond to the Court, particularly if served. But if you have not been properly served, there has been no alternative service, and the court has no record that you have proper notice, you do not have to respond!

If you or someone living at your address on record with the MVD has been served, there are still many strategies and tactics attorneys use to fight those cases that come to this point.



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## Chapter 3: Tactics & Strategies

As in any legal case, there are many tactics and strategies that can be used to achieve a proper defense. Certain strategies are best employed by experienced attorneys, while others may be executed by individuals on their own behalf. We will explore the most commonly used tactics that have been successful in fighting photo radar.

### Challenging Service is Your First Line of Defense

Before fighting the actual ticket, it may be wise to challenge the service that was allegedly effectuated on an individual in a case.

When a person is served, the process server has to file what is known as an Affidavit of Service with the Court. This is a document upon which the process server swears that service was completed properly. It often identifies certain characteristics that indicate service was proper, including the address, description of a vehicle if present, and description of the individual to whom the papers were delivered.

This sworn document can be challenged by requesting that the case be set for a hearing, not on the original ticket, but on the issue as to whether service was proper. At this hearing, either the court or the individual requesting the hearing (depending upon the jurisdiction) has to subpoena the process server to appear for the hearing. At that hearing, a defendant or their attorney can cross-examine the process server regarding the effectiveness of service. If the process server fails to appear at the hearing or fails to testify properly, then service will not be considered proper and the case will likely get dismissed due to time limitations.

Because of the technical details involved in these types of cases it is recommended these tactics be exercised by experienced attorneys or after considerable research.

## Civil Traffic Hearing is Your Chance to Present Evidence

A civil traffic hearing is an informal hearing that is scheduled any time that you, or your attorney, wish to contest a civil traffic infraction that has been alleged against you.

At the hearing, the officer is required to appear in court to testify against you and explain why he or she wrote you the citation. The officer will receive a formal summons, or order, from the court and tells them where and when to appear. You must also appear at the hearing. If you do not appear, you automatically lose your case and the court will enter what is called a default judgment against you. This means that you lose your case automatically. When a default judgment is entered against you, your license will be suspended and your fines increase dramatically. Your license will remain suspended until you pay your fines in full. Accordingly, it is important that you appear.

Once all parties are ready and have been sworn in by the Judge or the hearing officer, the officer will testify first. The officer has to discuss key elements of your case, including describing the location of the offense, the date and time of the violation, and the nature of the violation itself. If the officer misses these elements, then the officer has not brought forth a sufficient complaint.

When the officer is finished testifying, you have the opportunity to ask the individual questions. For example, if it was a speeding case, you will likely want to ask about the weather conditions, the safety hazards in the roadway, questions regarding the officer's calibration records and training and experience. During this questioning, it is not a time for you to state your side of the story. Instead, this is only for questions relating to the officer's testimony.



When you are finished with your questions, it will be time for you to give your side of the story to Judge. You can discuss all facts that believe to be relevant to your case, including whether you were in control of your vehicle, whether there were abnormal conditions in the roadway, your driving record, and other factors.

The Judge may have clarifying questions for either you or the officer, and may ask those questions as this is an informal hearing.

After the conclusion of testimony, the Judge will decide the case based on the standard of “preponderance of the evidence.” This is standard that the state must reach, and means that you will be found responsible if the Judge believes that it is more likely than not that there was an infraction committed. If the Judge believes that it was less likely than more likely that you committed the offense, the Judge will find you not responsible.

There is always an opportunity to appeal a Judge’s ruling, and if you decide to do this you will receive paperwork from the Court with strict instructions that must be followed.

### **Identification: The It’s Not Me! Defense**

This is the very common “that’s not me” defense. If the photos are of poor quality, and many are, an individual charged may be able to argue that they are not the person driving the vehicle and cannot be found responsible for the ticket.

This is often a difficult defense for individuals to exercise on their own without an attorney due to one key point – the individual claiming this defense has to appear physically in Court. This give the Judge in the Court the opportunity to see that individual in person and compare the individual standing before her with the person



in the photograph. With this ability to make comparisons and having heard this defense many times, Judge are often unlikely to dismiss a case on this basis.

Attorneys, however, have the unique ability to appear on behalf of their clients. This prevents the Judge from having the opportunity to make detailed comparisons of people who are standing directly in front of them. Additionally, Judges vary greatly in their analyses in this area. The comparison of a person's face to a driver's license photo is highly subjective and judges differ greatly in their analytical process in this area.

### **Constitutional Objections Probably Won't Work**

Many people object to photo radar devices on a Constitutional principle. While well intentioned, these objections are typically rejected by Courts in Arizona. There are many legal principles inherent in the United States Constitution that are on point with photo radar systems, but unfortunately justices across Arizona tend to support the money generating systems. As a result, Constitutional objections arising from due process arguments or unlawful searches and seizures relating to photo radar typically fail.

### **Trial Requirements: What the State Has to Prove**

Photo radar violations are civil offenses, meaning they differ from criminal violations. Criminal violations have a different and more strenuous standard. In criminal law, the standard that must be met before being found guilty is "beyond a reasonable doubt." This is higher than the standard faced for a photo radar violation. For civil traffic offenses, the standard that must be met prior to being found responsible is "preponderance of the evidence."

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In law school, there is an important acronym that young attorneys learn regarding establishing a sufficient complaint. That is known as L.O.V.I.D., which stands for:

- Location
- Offense
- Venue
- Identification
- Date & Time

In any testimony, the state must prove each of these elements in order to establish a sufficient claim. Failure to establish even one of these elements warrants a complete dismissal. However, it is often difficult to determine whether an element has been satisfied, or even more common it is difficult to alert a judge that he/she failed to recognize a missed element in the state's testimony. Many Judges are not licensed attorneys, merely elected through the legislative process. Moreover, many Judges hearing photo radar or civil traffic hearing are not elected, simply appointed hearing officers. It is common that they are not trained to recognize these legal elements.

### **Plea Resolutions: Find a Non-Point Way Out**

Many jurisdictions with photo radar systems promulgate the idea that there is no choice regarding resolving a citation. This is not the case. In fact, there are many statutes and many resolutions that can save a driving records, points, fines or both. Additionally, may resolutions preserve a clean driving record and can save significant amounts on long term insurance rates. These resolutions tend to be more technical in nature but include statutory amendments including [Failure to Obey a Traffic Control Device](#) and [Waste of Finite Resources](#). There are also statutory codes Courts enter that do not translate to points on a motor vehicle record with the Motor Vehicle Department.

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## Contact an Attorney

This guide is a brief overview of potential issues that may arise with Arizona Photo Radar systems. To protect your license and your privilege to drive, it is important to contact an experienced attorney familiar in this field of practice.

Should you have any questions or concerns, please feel free to contact the attorneys at R&R Law Group for a free consultation at (480) 400-1355 or visit our website at [www.rrlawaz.com](http://www.rrlawaz.com).

We are always happy to speak with you!



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