Action Plan for Improved CDL Enforcement & Masking Avoidance





One Driver.



One License.







Why be concerned about CDL cases?







CMV crashes are more likely to be fatal

CMV crashes are disproportionately high

Even fender benders are more likely to be deadly



How do we know which truckers are most likely to crash?









Who are the drivers that can be predicted to be involved in a crash?

•Overall, almost ten percent (9.38%) of all drivers in this analysis were convicted of an offense.



If a Driver had	The Crash Likelihood Increased
A Reckless Driving Violation	114%
A Failure to Yield Right of Way violation	101 %
A Failure to Keep in Proper Lane Conviction	83%
A Failure to Use/Improper Signal Conviction	82%
A Past Crash	74%
Hours of Service Violation	50%
Speeding	40%
	NIT







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Conviction Defined 49 CFR 383.5

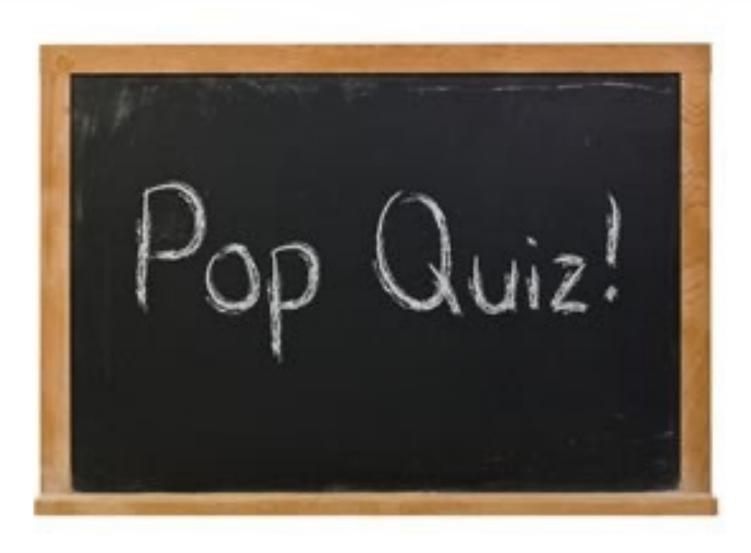
- An unvacated **adjudication of guilt**
- A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal (DMV)
- An unvacated **forfeiture of bail or collateral** deposited to secure a person's appearance in court
- A plea of **guilty or nolo contendere** (no contest) accepted by the court



Conviction Defined Cont'd

- The **payment of a fine, or court cost** (fees imposed by a court [at the conclusion or as part of the final resolution of the case] intended to cover the court's expense of handling the case)
- A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated
 - Example: Failure to appear in court, failure to pay fine, and/or failure to comply with a court mandate









Administrative Law Judge determines at an Administrative Hearing the Defendant violated Implied Consent Law.

Is this a conviction?



Yes.

A "determination that a person has violated or failed to comply with the law, by an authorized administrative tribunal," is considered a conviction under the CFR.



After arraignment, Defendant absconds. Judge signs bail forfeiture.

Is this a conviction?





Yes.

An "unvacated forfeiture of bail" is also considered a conviction under the CFR.







Felony Convictions w/ MVs (§322.61)





Felony Convictions w/ MVs

HOME



NEWS DRIVERS ADVERTISE

CONTACT

Truck inspection on NYS Thruway leads to driver arrest on weapons charges

By Ashley - December 15, 2020



New York State Police (NYSP) arrested a truck driver after a commercial vehicle inspection led to the discovery of a several semi-automatic weapons.



Felony Convictions w/ MVs









(Absolutely No) Masking

- A disposition that prevents the violation or the conviction from being reported on the CDL/CLP Holder's driving record
- masking n. 1. Criminal law. The practice or an instance of a defendant's agreeing by plea bargain to plead guilty to a less serious offense than the one originally charged, as by pleading guilty to parking on the curb when one has been charged with speeding in a school zone.
 In critical legal studies, the act or an instance of concealing something's true nature <being a crit, Max contends that the legal system is merely an elaborate masking of social injustices>. mask, vb.
 Black's Law Dictionary (11th ed. 2019).



Federal Prohibition Against Masking

- 49 CFR 384.226
- The State must not:
- Mask
- **Defer** imposition of **judgment**
- Allow diversion program
- That would prevent a CDL* holder's conviction





Federal Prohibition Against Masking Cont'd

- For **ANY violation** of a State or local traffic control law (*except parking, vehicle weight or vehicle defect*)
- In ANY vehicle
- From appearing on CDL* Holder's driving record
- Whether or not convicted in home state or out-of-state

* Or CLP holder

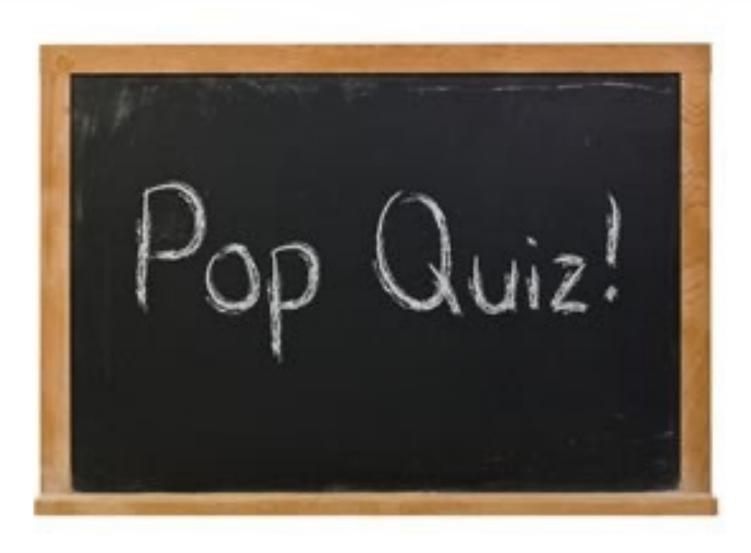


Actions Constituting Masking

- Deferral and Diversion Programs:
 - Permitting a CDL Holder, after determination of guilt, to perform actions that will result in conviction being downgraded or erased
 - Pre-trial programs prior to a preliminary judgment being entered to complete a program that will result in a charge being downgraded, dismissed or prevent the entry of a preliminary judgment
 - Examples: Community Service, Traffic School, Drug/DUI Court, Adjournment in Contemplation of Dismissal





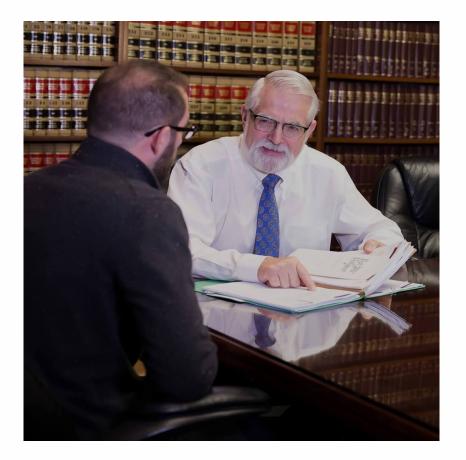






Prosecutor: "Your client has a CDL and is charged with traveling 75 mph in a 55 mph zone in his personal vehicle. I'll reduce the speed to 69 mph in a 55 mph zone."





Prosecutor: "Your client has a CDL and is charged with DWI in his personal vehicle. I'll reduce it to reckless driving."





Prosecutor: "Your client is charged with DWI in his personal vehicle but relinquished his CDL before arraignment. Since he no longer has a CDL, I will agree to a deferral."





Prosecutor: "Your client is charged with **Reckless Driving as a** result of driving 70 mph in a 45-mph work zone. I'll give her a "parking on pavement" if she attends traffic school.





Police Officer pulls over a driver for speeding in a non-CMV vehicle. Instead off issuing a speeding ticket, the officer issues a warning because the driver has a CDL.



Not Masking

<u>Judges and Prosecutors Maintain</u> <u>Authority and Discretion to:</u>

- Negotiate Dispositions and
- Dismiss Charges that are:
 - Unsupported By Evidence
 - Constitutionally Infirm
 - Procedurally Improper



Consequences of State Non-Compliance (49 CFR § 384.401 (a) and (b) (2021)).

Withholding Millions in

Highway Funds

- Up to 4% of Federal-aid highway funds after 1st Year
- Up to 8% After 2nd Year and subsequent year(s) of noncompliance





scrimmage, IIII disqualification crippling, debi tration, paral



But I'm going to lose my CDL!





CDL Disqualification

- 49 CFR 383.51- Controls federally mandated disqualifications
- Applies to Drivers who held or *should have held a CDL* at the time of the offense, or hold a CLP
- Table 1: Major Offenses
- Table 2: Serious Traffic Violations
- Table 3: Railroad Crossing Offenses (not pictured)
- Table 4: Out-of-Service Orders (not pictured)



Table 1 to § 383.51 DISQUALIFICATIONS FOR MAJOR OFFENSES

Table 1 to §383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

If a driver operates any motor vehicle and is convicted of:	For a first conviction or refusal to be test- ed while operating a CMV, a person re- quired to have a CLP or CDL and a CLP or CDL holder must be disqualified from op- erating a CMV for	For a first conviction or refusal to be test- ed while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqual- ified from operating a CMV for	For a second convic- tion or refusal to be tested in a separate incident of any combi- nation of offenses in this Table while operating a CMV, a person re- quired to have a CLP or CDL and a CLP or CDL holder must be disqualified from op- erating a CMV for	For a second convic- tion or refusal to be tested in a separate incident of any combi- nation of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from op- erating a CMV for
(1) Being under the influence of alcohol as pre- scribed by State law	1 year	1 year	3 years	Life	Life
(2) Being under the influence of a controlled substance	1 year	1 year	3 years	Life	Life
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV	1 year	Not applicable	3 years	Life	Not applicable

Disqualification: Major Offenses

- Automatic Disqualifiers
- Related to safety and often criminal
 - Leaving the scene
 - DWI (drunk/drugged)
 - Implied Consent Laws/ Refusals
 - Drug Trafficking
 - Human Trafficking in a CMV
 - Vehicular Manslaughter, Homicide, Crim Neg
- Any felony in ANY motor vehicle
- Min. 1 year up to lifetime



Table 2 to § 383.51 DISQUALIFICATIONS FOR SERIOUS TRAFFIC VIOLATIONS

Table 2 to §383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

If a driver operates any motor vehicle and is convicted of: (1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for	For a second conviction of any combination of offenses in this Table in a separate in- cident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction re- sults in the revocation, can- cellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileg- es, for	For a third or subsequent conviction of any combina- tion of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for	For a third or subsequent conviction of any combina- tion of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for
limit				
(2) Driving recklessly, as de- fined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	1 20 days	120 days

Disqualification: Serious Traffic Violations

May result in disqualification

- Cumulative in nature
 - Speeding 15 mph or above
 - Reckless Driving
 - Following to Closely, Improper Lane Change
 - Texting/Cell Phone w/driving
 - Fail to obey traffic device, Out of Class or w/o CDL violation
- Lesser time period of disqualification
- Roughly, 60 days up to 120 days



Disqualification: Other Violations

- Railroad Crossing Offenses
- Out-of-Service Violations
 - Only in a CMV
 - Mandatory Disqualification







THIS is the Nightmare!



National Traffic Law Center Resources

- CDL Regulations
- Free Training
 - Prosecutors
 - Law Enforcement
 - Judges
 - Highway Safety Officials
- Topics
 - Masking, etc.
 - Disqualification
 - CDLIS
 - Impaired driving, etc.
- Issue Awareness
- Legal Research
- CDL Resources

Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations



SECOND EDITION

National Traffi



MASKING QUICK REFERENCE GUIDE

Reporting CDL Violations:

The Federal Motor Carrier Safety Administration issues commercial motor vehicle safety regulations via the Code of Federal Regulations (CFR). These regulations create a uniform system of licensing commercial drivers from state to state. Although a state may have stricter licensing and license oversight regulations, compliance with the commercial driver license (CDL) federal regulations is required. Failure to comply may result in sanctions against the state. The Safety and Safety and Safety and Safety and Safety and Safety and Safety regulations of the safety regulations of equates to ONE driver, ONE license, and ONE record (see, 49 C.F.R. §383.21). This single license makes it much easier to accurately track the driving history of any driver and makes the cooperation of prosecutors and courts. In reporting all CDL violations more critical.

Prompt Reporting of CDL Convictions under 49 C.F.R. § 384.208, § 384.209, § 384.225

The Code of Federal Regulation: requires states to report CDL consictions prometly (within 10 days) for CDL holders or those who should have held a CDL backaus of the nature of their violations. This includes reporting to the Commercial Dever's License Information System (CDLS) and reporting all violations for out-of-state drivers to his or her home state (state of CDL issuance). Courts are the first link in this chain of events, so prompt and accurate reporting of violations is essential. Prosecutors and judges should be avaire that some crimes other than traditional "Traffic offensari" (drug trafficing, any felony in committed in any type of vehicle) carry mandatory CDL disqualification (see, 49 C.F.R. § 383.51) and must be reported. Any time o vehicle is involved, a prosecutor or court should inquire if the defindant holds a CDL.

The Commercial Driver's License Information System (CDLIS)

CDUS is a nationwide computer system that enables state driver licensing agencies (SDLAd) to ensure that each commercial driver has only one driver's license and one complete driver record. SDLAs use CDLIS to complete various procedures, including: transmitting out-of-state convictions and withdrawals, transferring the driver record when a commercial driver's license holder moves to another state, responding to requests for driver status and history.

Masking is Prohibited by 49 C.F.R. § 384.226

"The State must not mark, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, whicle weight, or vehicle defect violations) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed in another State."

Conviction Defined in 49 C.F.R § 383.5

A considion is "jainy unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a pies of guilty or nois contendire accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penality is related, suspended, or prorated."

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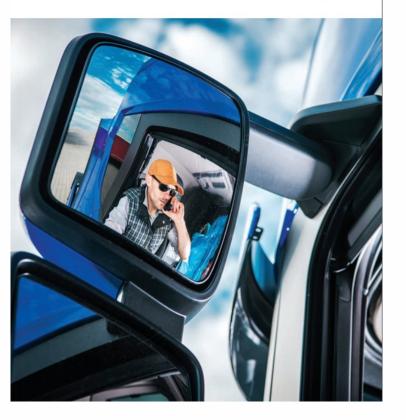
This document was created by the National Traffic Law Center, a program of the National District Attorneys Association.



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 - Highway Safety Officials
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 - Masking, etc.
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- Issue Awareness
- Legal Research
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Distracted Driving CDL Enforcement for Prosecutors and Law Enforcement









BY PROFESSOR JOHN KWASNOSKI

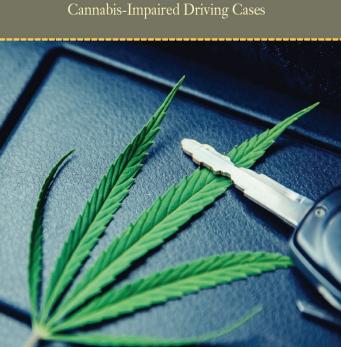


National Traffic Law Center Resources

- Funding
- Mission
- Assistance
 - Technical assistance
 - Develop and update training curriculum
 - Expert Witness Project
 - Newsletter
 - TSRPs across the nation
- Products for download



National Traffic Law Center





National Traffic Law Center

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