

Action Plan for Improved CDL Enforcement & Masking Avoidance

NTLCO

NATIONAL TRAFFIC LAW CENTER





One Driver.



One
License.



One
Record.

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?



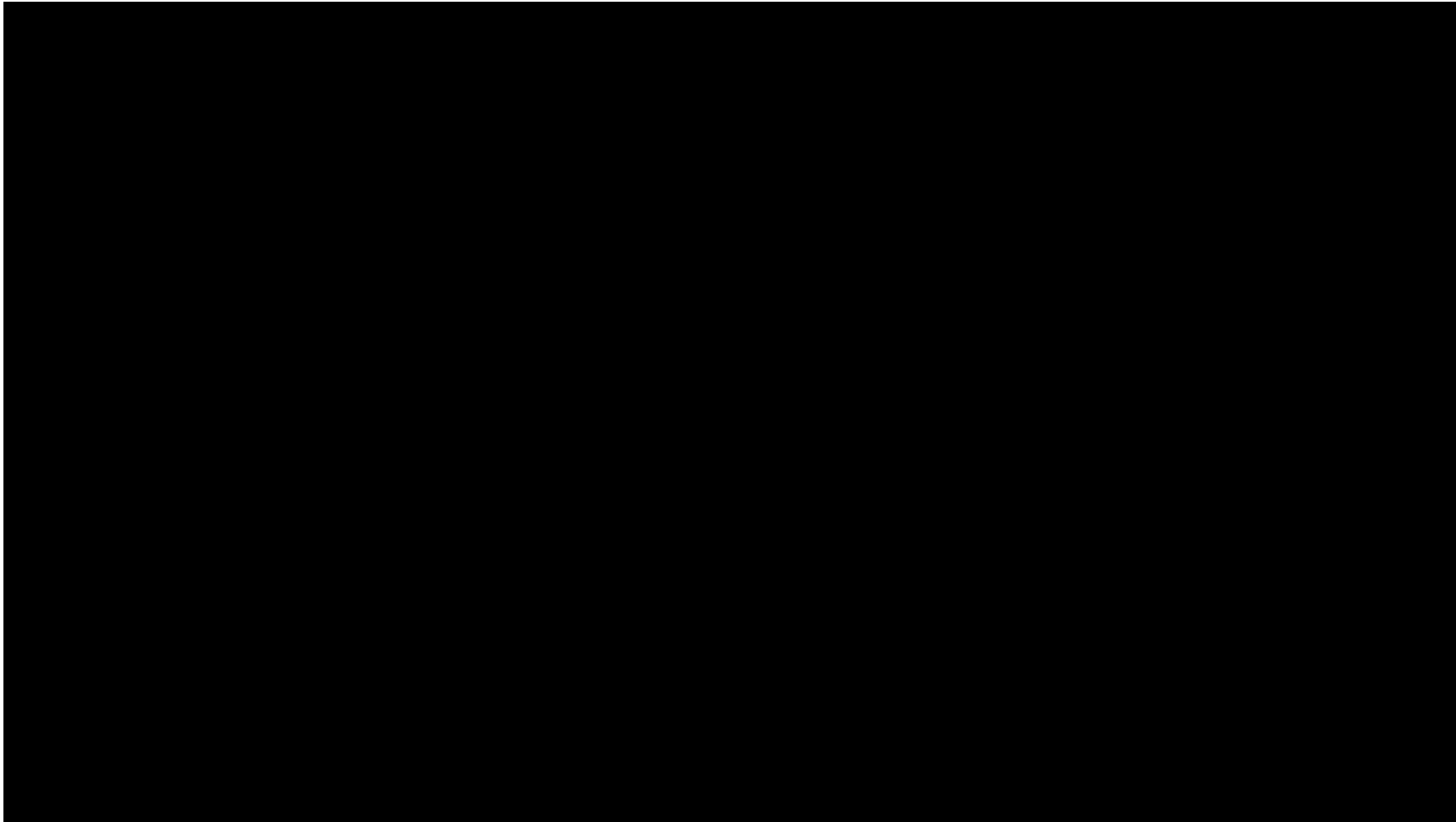


Who are the drivers that can be predicted to be involved in a crash?

- 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%

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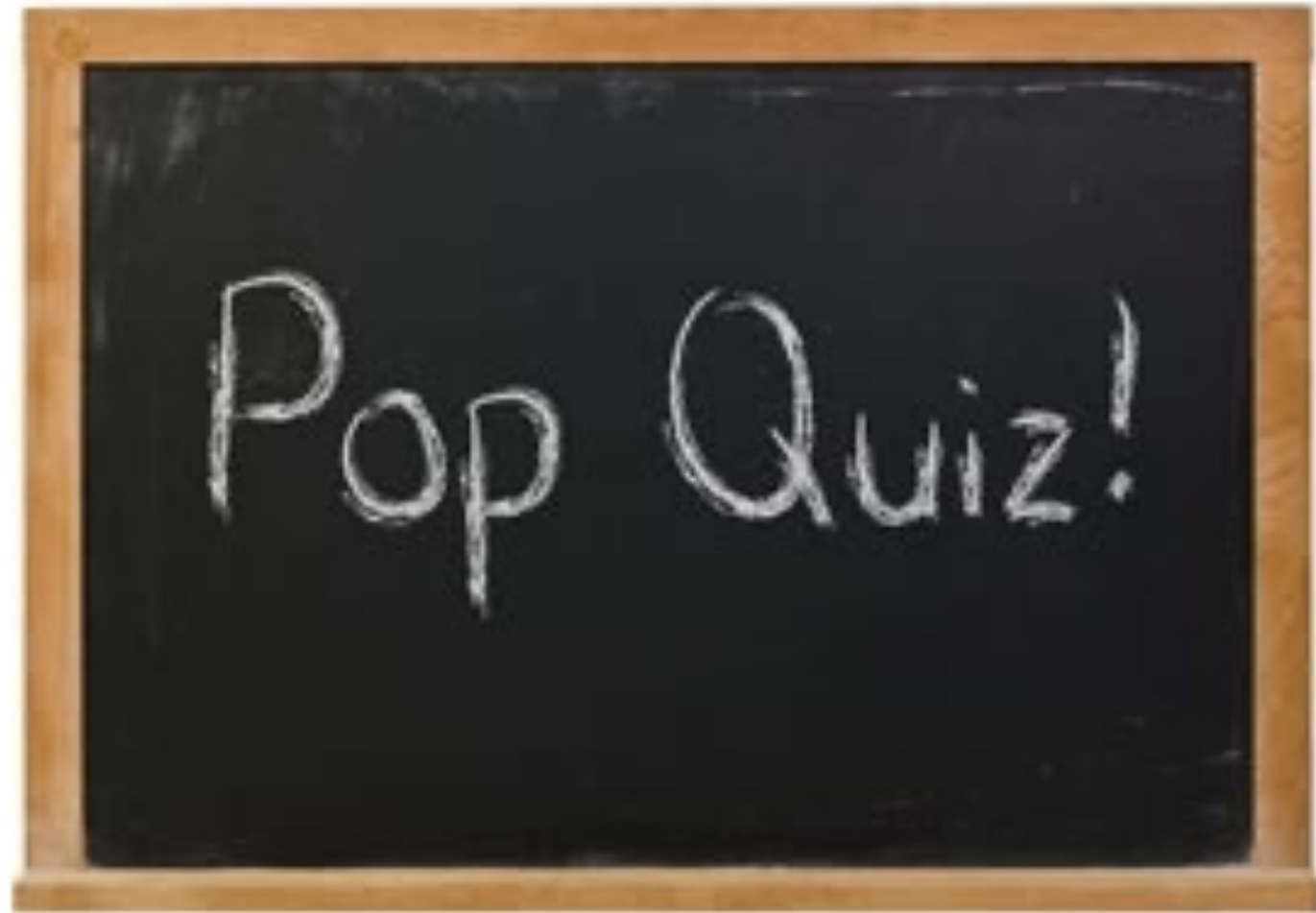
Conviction Defined

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.

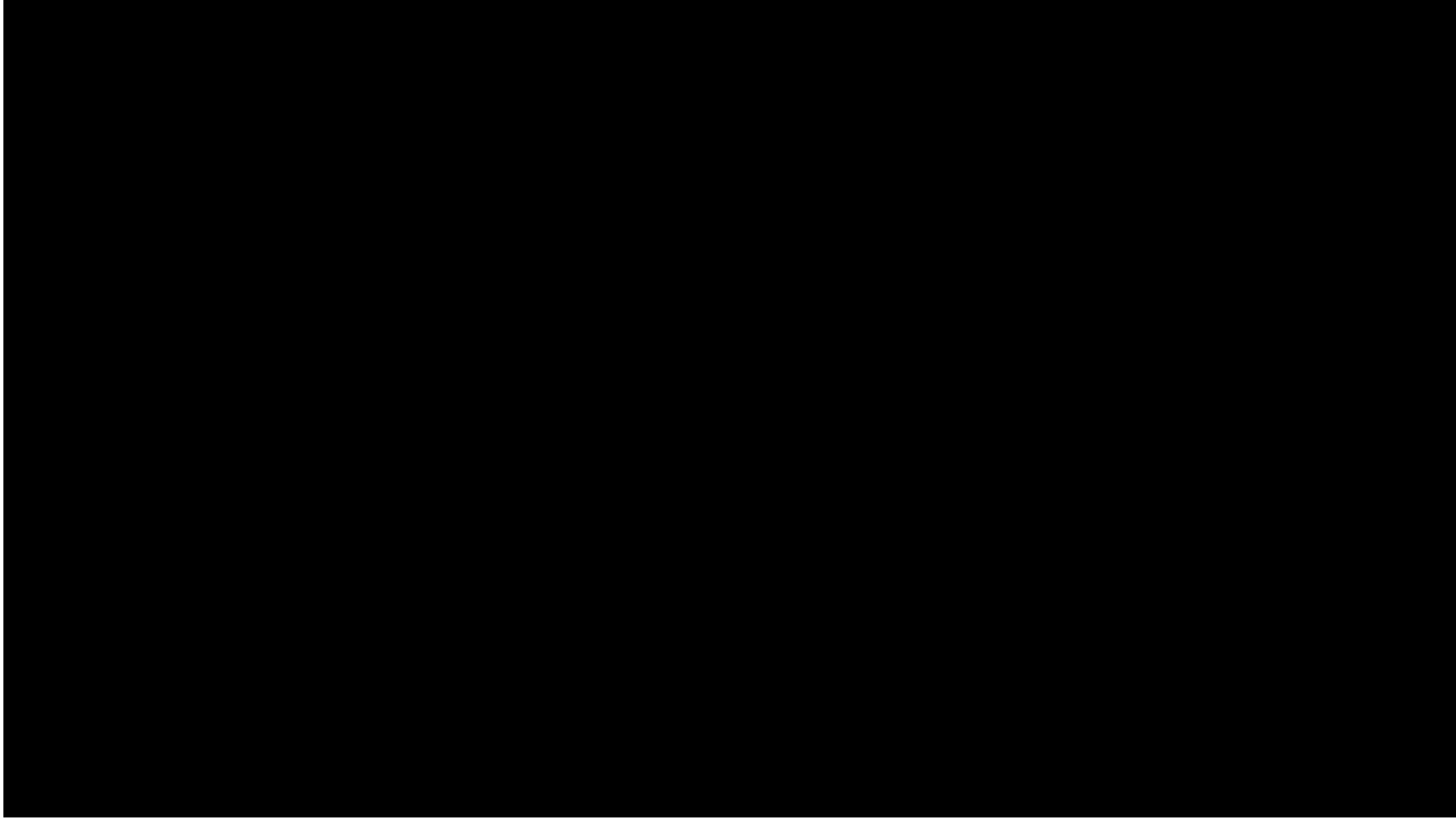
Is this a conviction?



Yes.

An “**unvacated forfeiture of bail**” is also considered a conviction under the CFR.

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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.* **2.** 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**

* Or CLP holder

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

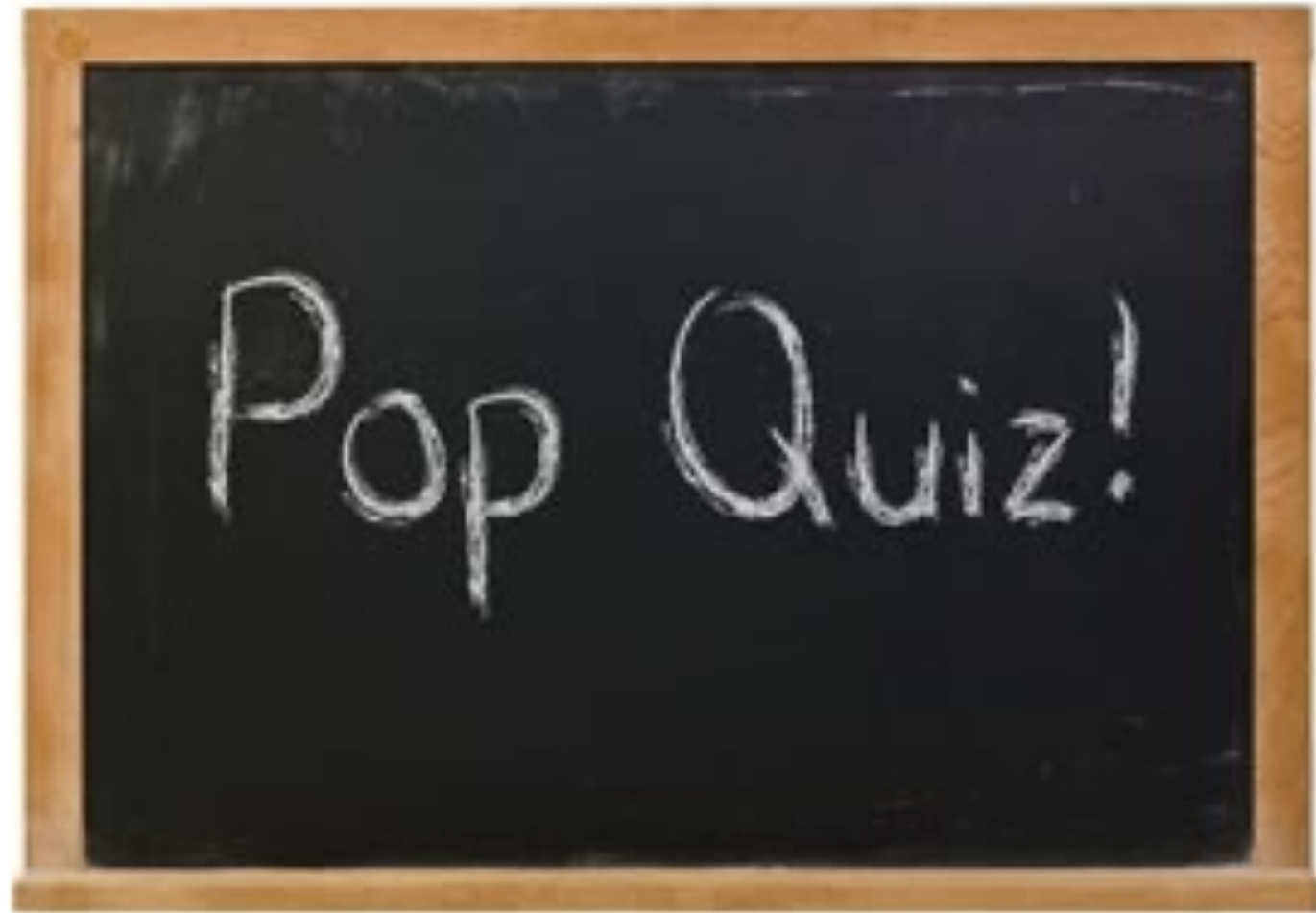
Actions Constituting Masking

- 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

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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 of issuing a speeding ticket, the officer issues a warning because the driver has a CDL.

Not Masking

Judges and Prosecutors Maintain Authority and Discretion to:

- 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

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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 tested <i>while operating a CMV</i> , 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 first conviction or refusal to be tested <i>while operating a non-CMV</i> , a CLP or CDL holder must be disqualified from operating a CMV for...	For a first conviction or refusal to be tested <i>while operating a CMV transporting hazardous materials</i> 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 disqualified from operating a CMV for...	For a second conviction or refusal to be tested in a <i>separate incident of any combination of offenses in this Table while operating a CMV</i> , 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 or refusal to be tested in a <i>separate incident of any combination of offenses in this Table</i> while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for...
(1) Being under the influence of alcohol as prescribed 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:

<p>For a second conviction of any combination of offenses in this Table in a <i>separate incident within a 3-year period while operating a CMV</i>, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...</p>	<p>For a second conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder</i> 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...</p>	<p>For a third or subsequent conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a CMV</i>, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...</p>	<p>For a third or subsequent conviction of any combination of offenses in this Table <i>in a separate incident within a 3-year period while operating a non-CMV</i>, 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...</p>
<p>60 days</p>	<p>60 days</p>	<p>120 days</p>	<p>120 days</p>

(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit

(2) Driving recklessly, as defined 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

Disqualification: Serious Traffic Violations

- **May result in disqualification**
- Cumulative in nature
 - Speeding 15 mph or above
 - Reckless Driving
 - Following too 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

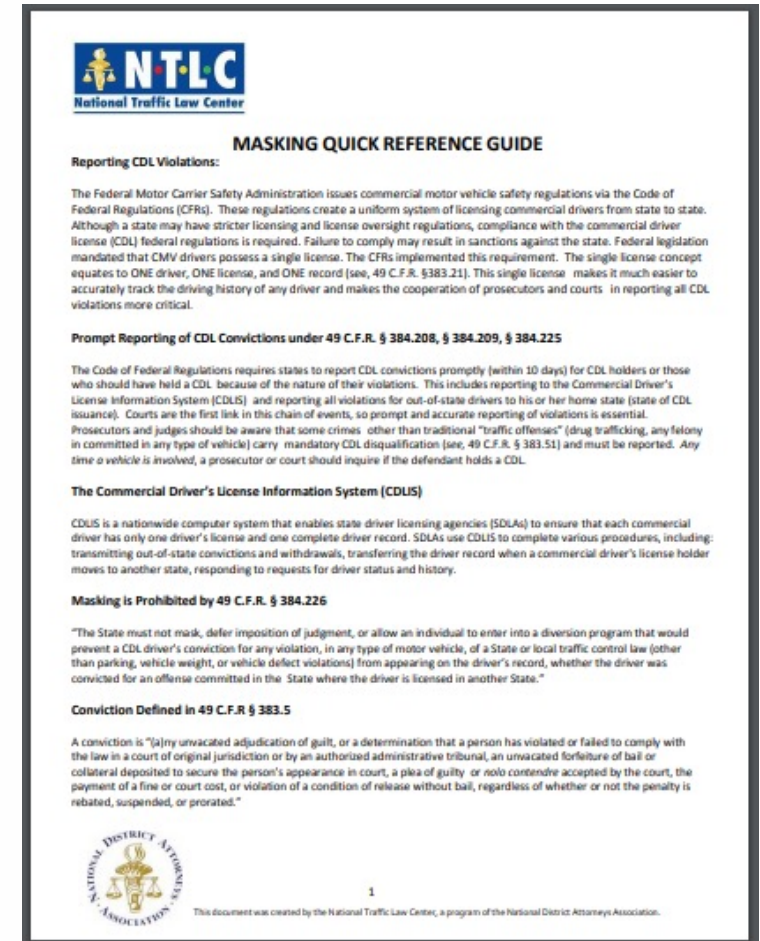
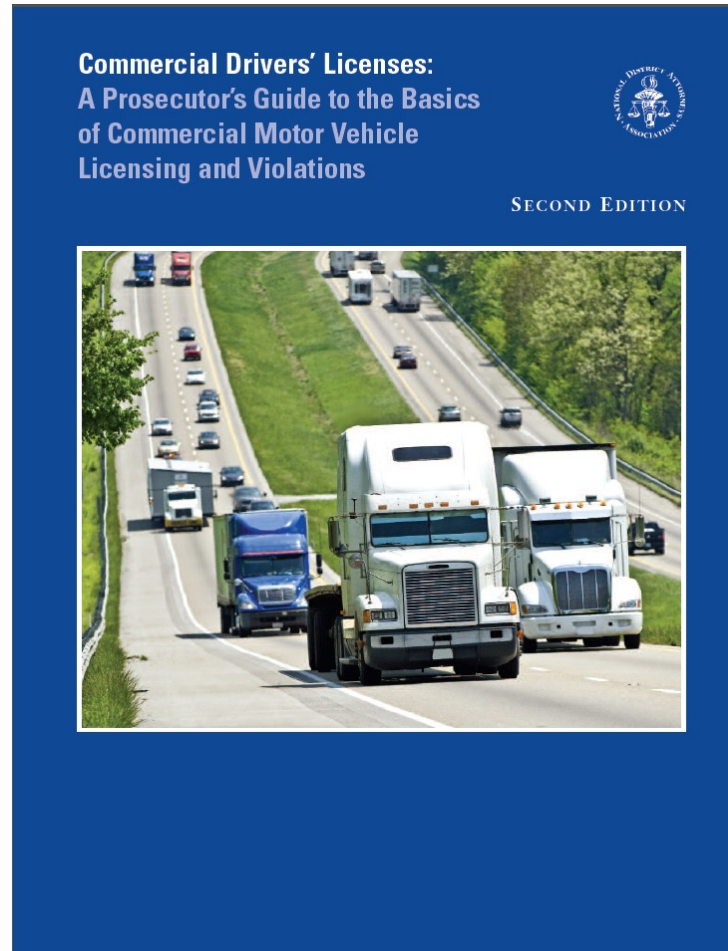
- Railroad Crossing Offenses
- Out-of-Service Violations
 - Only in a CMV
 - Mandatory Disqualification



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



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Distracted Driving CDL Enforcement
for Prosecutors and Law Enforcement



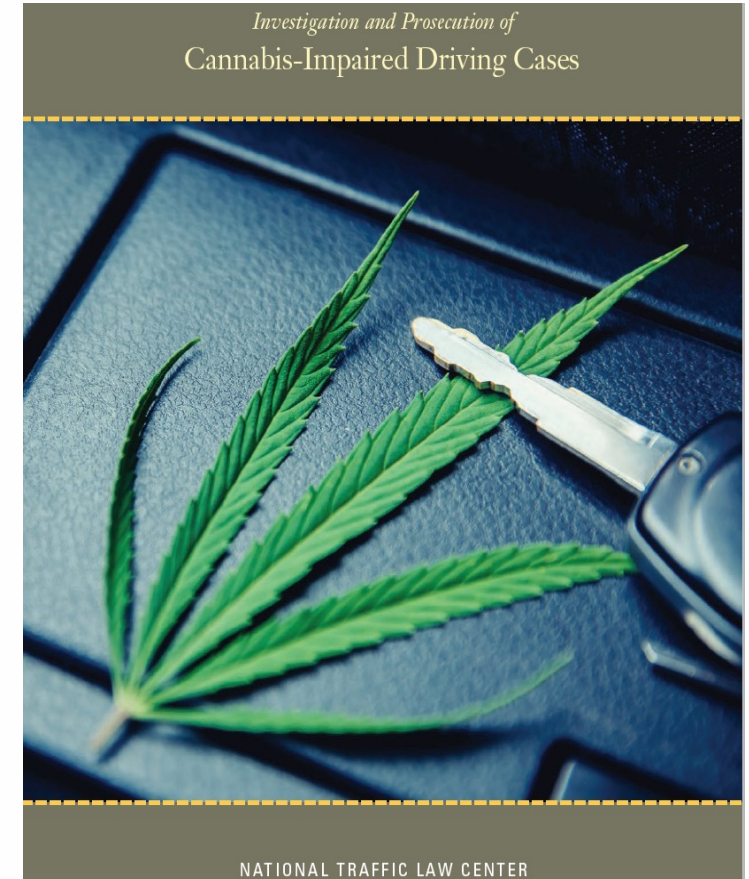
Large Truck Crash
Reconstruction for Prosecutors



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



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