



MASKING QUICK REFERENCE GUIDE

Reporting CDL Violations:

The Federal Motor Carrier Safety Administration has issued commercial motor vehicle safety regulations via the Code of Federal Regulations (CFRs). These regulations create a uniform system of licensing commercial drivers from state to state. Although each state may have stricter licensing and license oversight regulations, compliance with the commercial drivers' licenses (CDLs) federal regulations is required and failure to comply can result in an inability to issue CDLs and may be tied to certain federal highway funding. In the CFRs, the federal government has established a single license requirement. In other words, a driver can only have ONE license from ONE state (state of domicile) pursuant to 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

States are required to report CDL convictions promptly (within 10 days) for CDL holders or those who should have held a CDL because of the nature of their violations. This includes reporting to the Commercial Driver's License Information System (CDLIS) and reporting all violations for out-of-state drivers to their home states (state of CDL issuance). Courts are the first link in this mandated reporting chain so prompt reporting is essential. Prosecutors and judges should be aware that some crimes other than traditional "traffic offenses" (drug trafficking, vehicular assault, 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 a vehicle is involved*, a prosecutor or court should inquire if the defendant holds a CDL.

The Commercial Driver's License Information System (CDLIS) 49 C.F.R. § 383.5

The CDLIS system was "established by the Federal Motor Carrier Safety Administration (FMCSA) pursuant to section 12007 of the Commercial Motor Vehicle Act of 1986." The CDLIS is an interactive information system which allows licensing authorities in each state to communicate with each other. The CDLIS allows licensing agencies to make certain that CDL applicants do not hold multiple licenses and are not under any license sanctions, and also to make certain that information concerning convictions entered against an out-of-state driver can be transmitted to the state of licensure.

Masking is Prohibited by 49 C.F.R. § 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 CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) 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 conviction is "(a)ny 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 unauthorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or *nolo contendere* 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 penalty is rebated, suspended, or probated."



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DRIVER CHARGES	PROSECUTOR ACTIONS	COURT ACTIONS	MASKING?	EXPLANATION
DUI	Prosecutor allows a plea conditioned upon alcohol rehab and adjourns case 6 months.	Court allows non-adjudication. Non-adjudication is a process by which after a guilty plea or trial, the court withholds acceptance of the plea and sentence thereon, pending successful completion of any conditions imposed by the court. Upon successful completion of said conditions, the case is dismissed.	Yes.	Non-adjudication for CDL or CLP (Commercial Learner's Permit) holders is prohibited. These actions prevent the reporting of violations and hides a driver's true driving history.
Using Cellphone While Driving	No reduction offered. Driver pleads as charged.	Court allows withdrawal of plea and driver enters new plea to Failure to Signal, because driver complains his/her CDL will be revoked if convicted of the original citation.	Yes.	Withdrawal of plea itself is not Masking. However, if no legal basis exists to withdraw plea and withdrawal of plea is based on sympathy; this is Masking.
Failure to Yield	None.	Court convicts but allows traffic school in lieu of reporting conviction.	Yes.	Allowing driver, after adjudication of guilt (or no contest), to perform actions that will result in conviction being reduced/dismissed is prohibited. This practice is also called Diversion.

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DUI	No reduction offered. Driver pleads as charged.	Court takes plea and imposes sentence. Two years later, driver applies for expungement of his/her DUI conviction. Once driver meets requirements, Court grants expungement.	Yes.	Expungement is prohibited. It prevents discovery of a driver's true driving history by hiding certain convictions that were previously visible on the driver's record.
DUI	Dismisses case because of insufficient evidence.	None.	No.	Prosecutor (or judge) may dismiss case because evidence is weak. Even a reduction would be permitted for this purpose.
Reckless Driving	None.	Court accepts plea of no contest, removes case from docket for 6 months and then dismisses citation based on driver's clean history.	Yes.	An adjournment pending dismissal is prohibited. This action prevents the timely reporting of a conviction. This practice is also known as Deferral.
Speeding 20 mph over the limit in personal vehicle	Prosecutor reduces to parking ticket after defense attorney argues driver was NOT in a CMV and if convicted, will lose CDL.	Court accepts plea to parking ticket and fine is paid.	Yes.	Regulations apply to all vehicles. Driving in non-CMV is not a defense. Also, not every conviction will result in CDL revocation. <i>See tables in 49 C.F.R §383.51.</i>



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Following too Closely	No reduction offered. Driver pleads guilty as charged and pays fine.	Court collects fine. Conviction is posted to driver's record. Court allows traffic school to avoid the State DMV's posting of points on license.	No.	Conviction was reported. Not a violation of C.F.R to allow traffic school to avoid the assessment of <u>POINTS</u> . State law may differ.
Leaving the Scene of a Collision	None.	Driver makes charitable donation to Mother's Against Drunk Driving, Victim's Impact Fund or the local Little League. Court dismisses citation upon proof of charitable contribution made.	Yes.	Reduction or dismissal of CDL or CLP cases predicated on charitable donations is prohibited, and <u>may</u> be considered ethically questionable.

*** Federal regulations may or may not have been adopted in whole or part by any particular state. State law should be consulted.**

||-Additional CDL Resources-||

National Traffic Law Center: www.ndaa.org/ntlc_home.html

Federal Motor Carrier Safety Administration: www.FMCSA.org

National Judicial College: www.judges.org

National Center for State Courts: www.ncsc.org

American Association of Motor Vehicle Administrators: www.AAMVA.org

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