

From Roadside to Record

Wednesday, February 22, 2023 | 2:00 – 3:15PM

NTLC

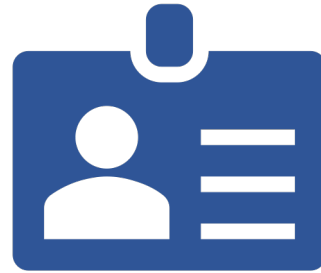
NATIONAL TRAFFIC LAW CENTER



NDA



One Driver.



One
License.



One
Record.

Why be concerned about CDL cases?



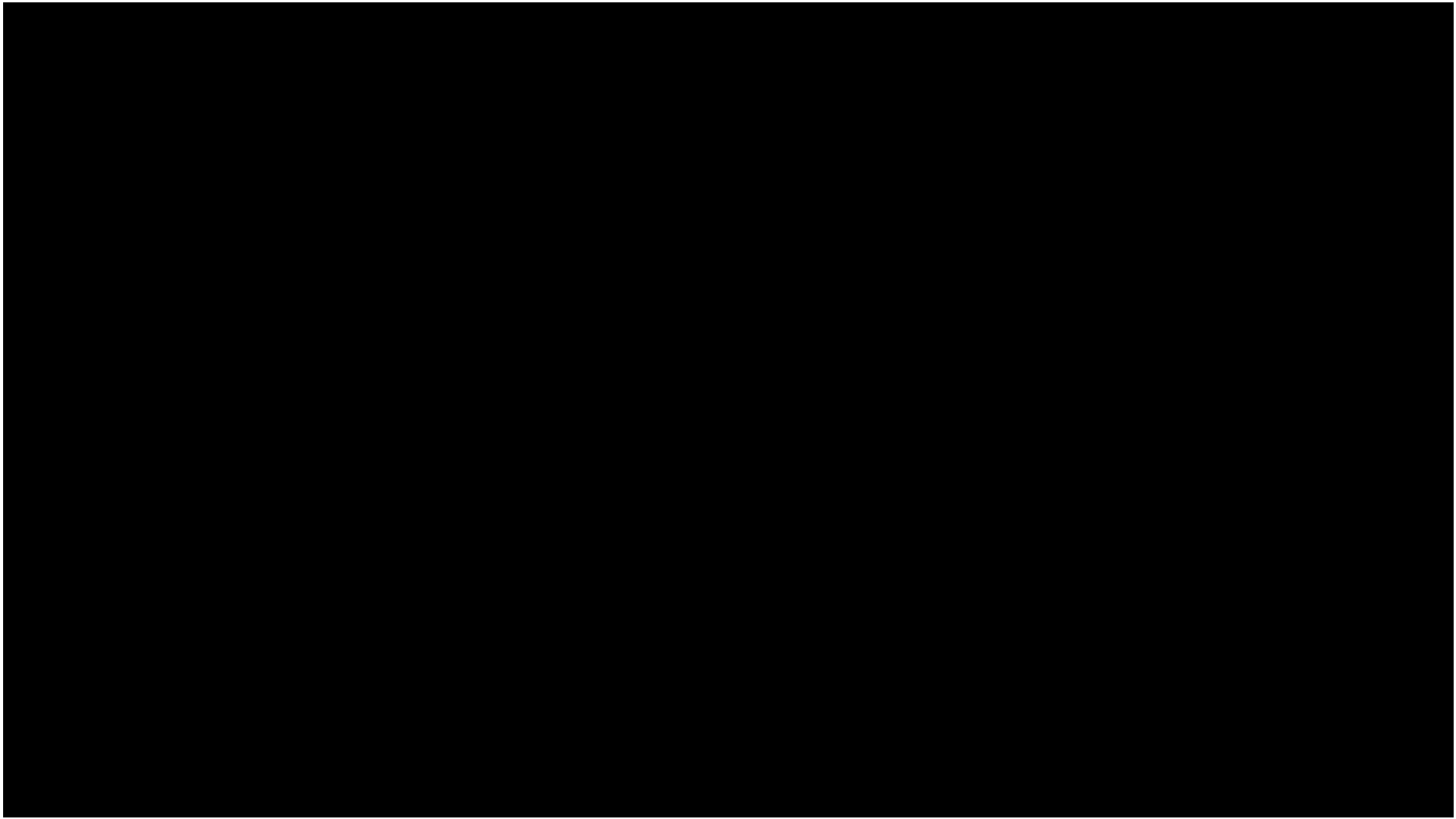
CMV crashes are more likely to be fatal



CMV crashes are disproportionately high



Even fender benders are more likely to be deadly



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

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

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



2022 Study: Predictors of Future Crash

Involvement	Future Crash Likelihood Increase
Driver Behavior	
A Failure to Yield Right-of-Way Violation	141%
A Failure to Use/Improper Signal conviction	116%
A Past Crash	113%
A Reckless Driving violation	104%
A Failure to Obey Traffic Sign conviction	85%
A Failure to Keep in Proper Lane conviction	78%
An Improper or Erratic Lane Changes violation	77%
A Reckless/Careless/Inattentive/Negligent Driving conviction	62%
An Improper Lane/Location conviction	61%
A Failure to Obey Traffic Signal/Light conviction	55%
A Speeding 1 to 15 miles Over Speed Limit conviction	48%

11alive.com
16-05-2019 Thu 11:57:49 AM

COURTESY: LEGACY FORD

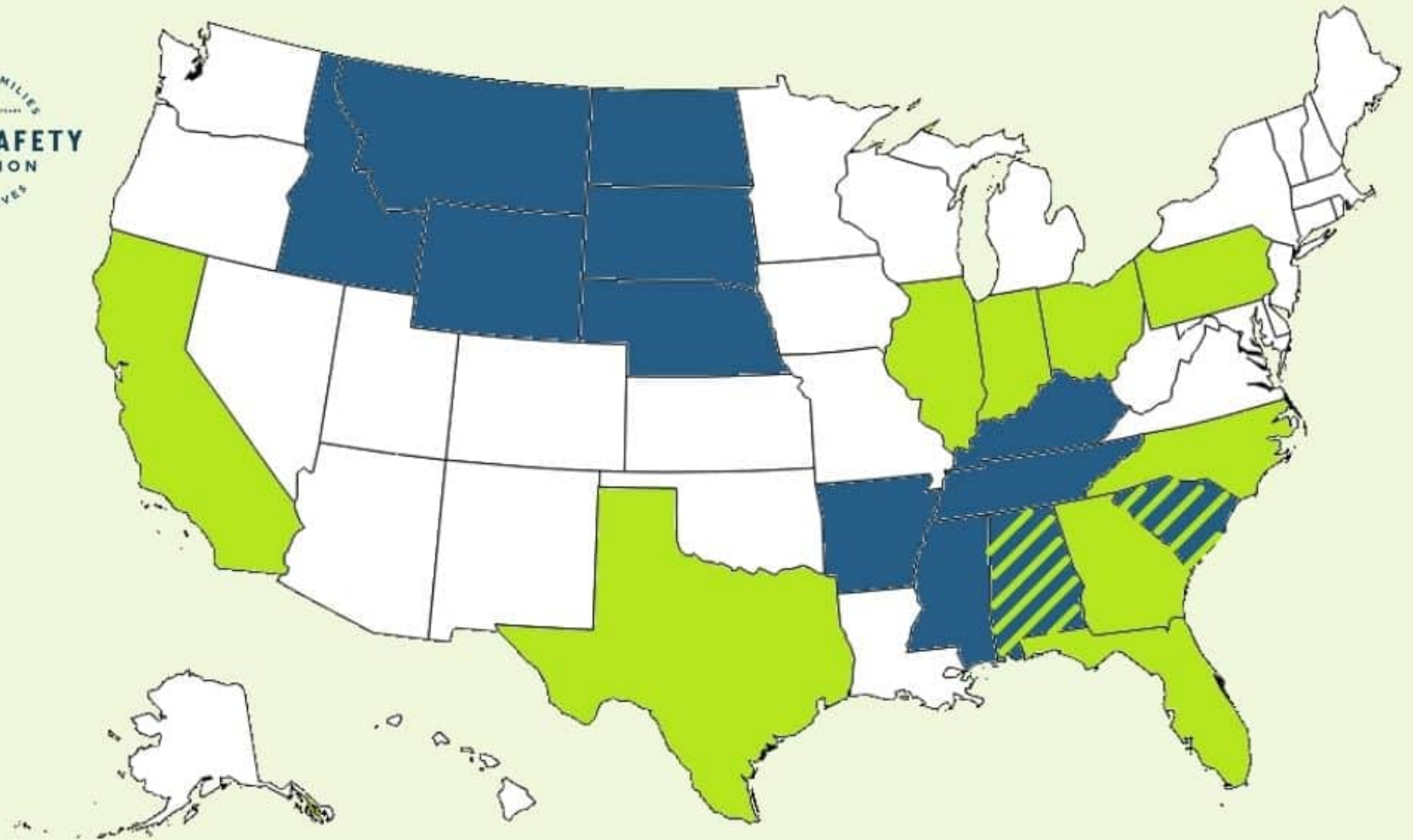


Backlot 2

WORST FATAL TRUCK CRASH STATES IN 2020

Per 100,000 population

Wyoming	4.3
South Dakota	3.1
Nebraska	2.9
Arkansas	2.9
Montana	2.9
Alabama	2.9
Idaho	2.9
Mississippi	2.8
North Dakota	2.7
Kentucky	2.6
Tennessee	2.6
South Carolina	2.5



Per Total # of Fatalities

Texas	643	North Carolina	170
California	398	Indiana	153
Florida	344	Ohio	149
Georgia	234	Alabama	141
Tennessee	179	Pennsylvania	133
Illinois	178	South Carolina	132



By 100,000 Population



By Total # of Fatalities

As Reported by NHTSA's National Center for Statistics and Analysis of FARS Data

Masking



(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

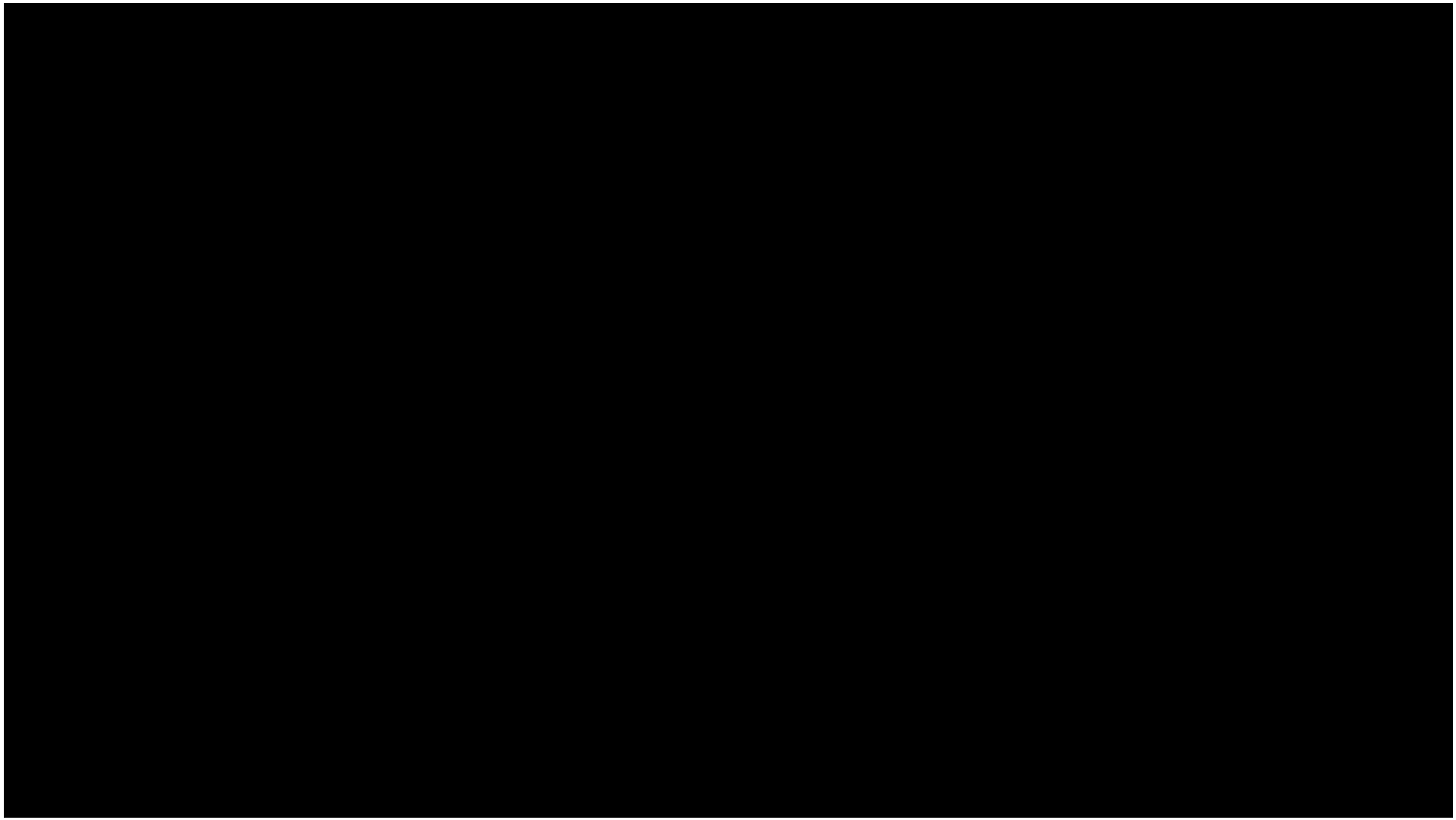
- 49 CFR 384.226
- The State must not:
 - **Mask**
 - **Defer** imposition of **judgment**
 - **Allow diversion** program
- That would **prevent a CDL** holder's conviction**

****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**



One State's Recent Data

41.63%

....of convictions checked had probable masking

21

Counties with no citations to check

59.7%

Counties with at least 1 probable masking violation

Pop Quiz



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 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.



Prosecutor: “Your client has a CDL and is charged with Impaired Driving in their personal vehicle. I’ll reduce it to reckless driving.”

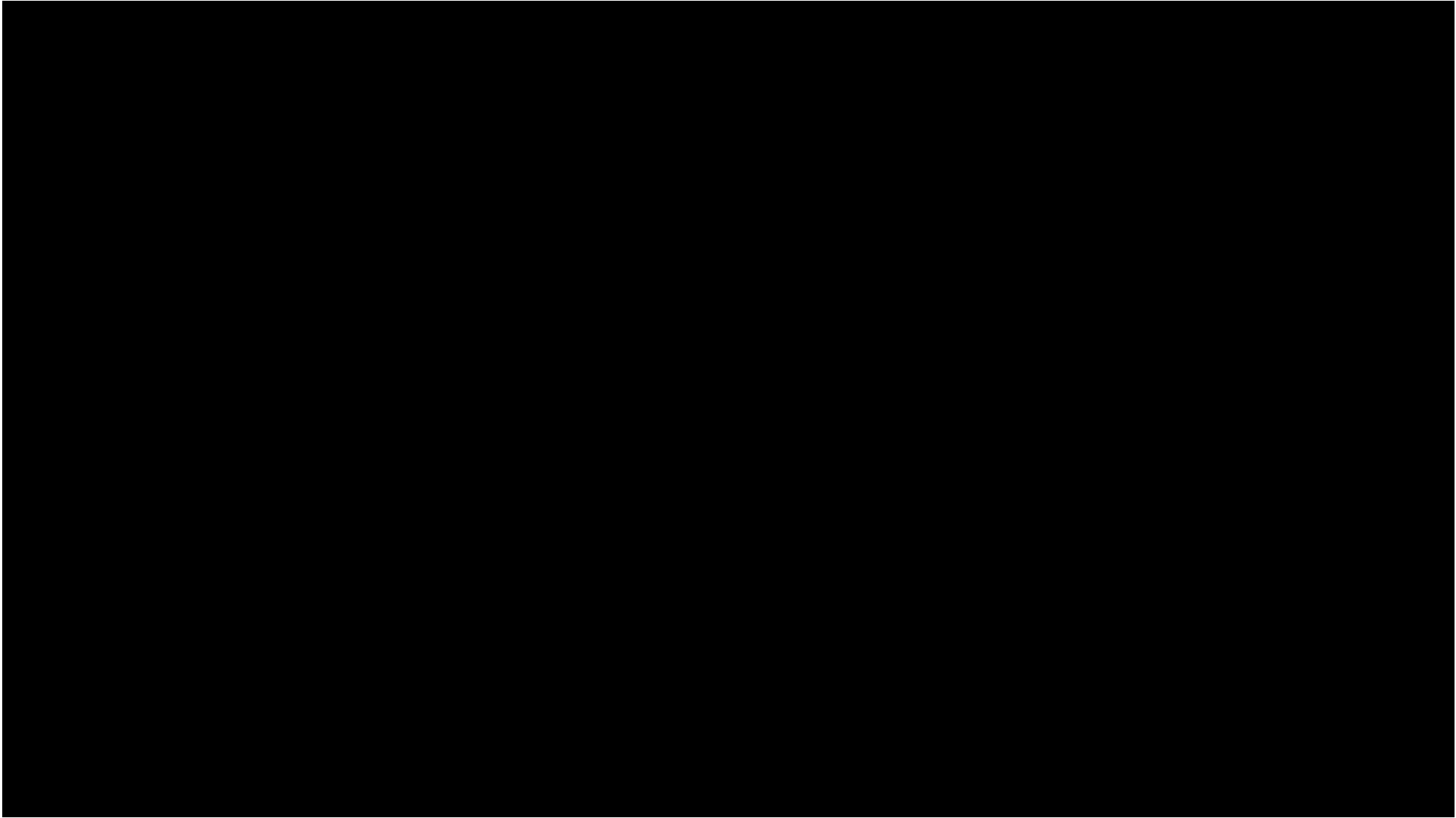


Judge sees that a CDL holder is charged with speeding in a CMV and suggests to the prosecutor that she dismisses the ticket because the CDL holder seems like a “nice guy.”

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 C.F.R. § 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

49 C.F.R. 383.5

“Conviction” Defined –

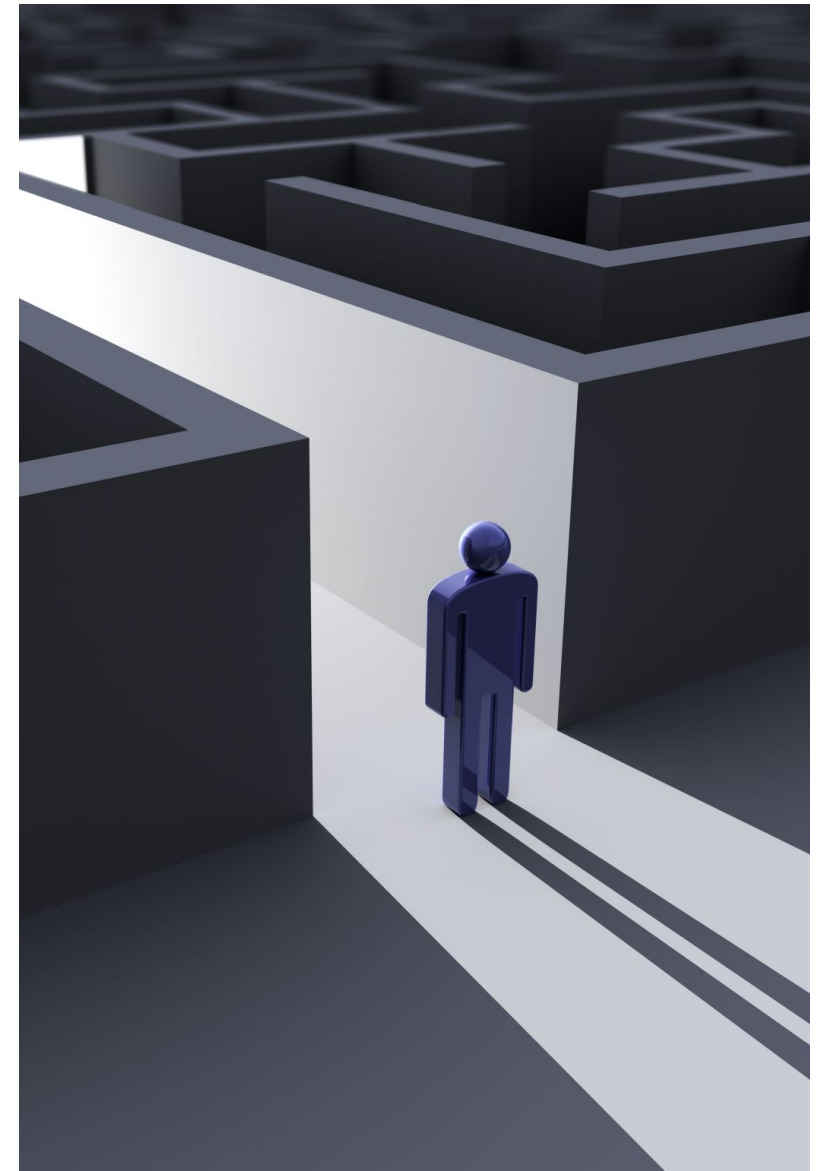
- an **unvacated adjudication of guilt,**
- or a determination that a person has **violated or failed to comply with the law** in a **court of original jurisdiction** or by an **authorized administrative tribunal,**



49 C.F.R. 383.5

“Conviction” Defined con’t–

- 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”



Felony Convictions w/ MVs



HUMAN TRAFFICKING



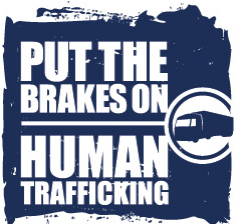
N TLC

NATIONAL TRAFFIC LAW CENTER



22 U.S.C. 7102 (11) – Severe Forms of Trafficking in Persons

- The recruitment,
- harboring,
- transportation,
- provision, or
- obtaining **of a person**



<https://www.fmcsa.dot.gov/commercial-drivers-license/human-trafficking>



22 U.S.C. 7102 (11) – Severe Forms of Trafficking in Persons

- For labor or services, through the use of **force, fraud, or coercion**
- For the purpose of **subjection to involuntary servitude, peonage, debt bondage, or slavery.**



<https://www.fmcsa.dot.gov/commercial-drivers-license/human-trafficking>



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
 - Driving Under the Influence (Alcohol/ Drugs)
 - 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

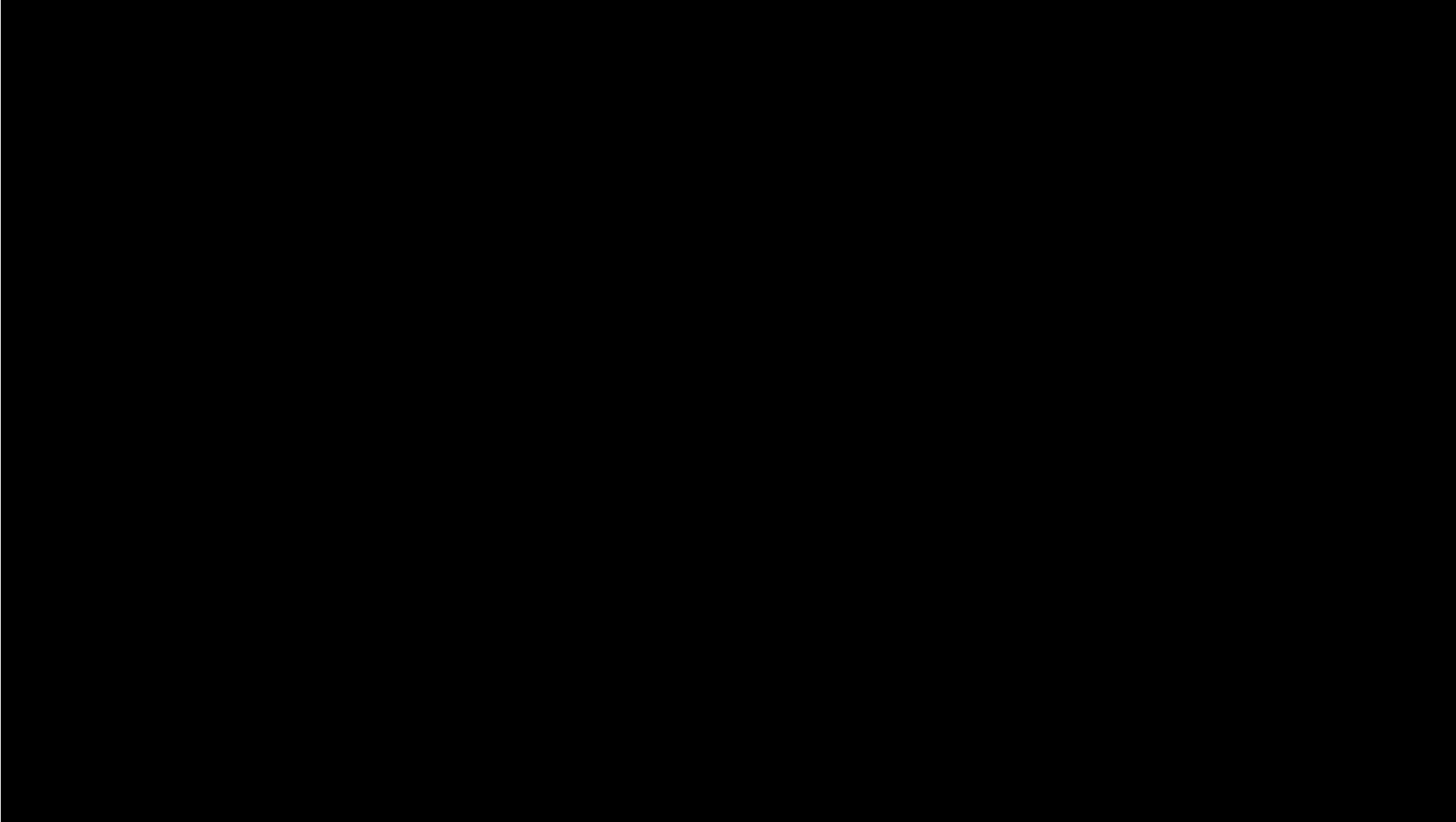
Table 2 to § 383.51 DISQUALIFICATIONS FOR SERIOUS TRAFFIC VIOLATIONS

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:

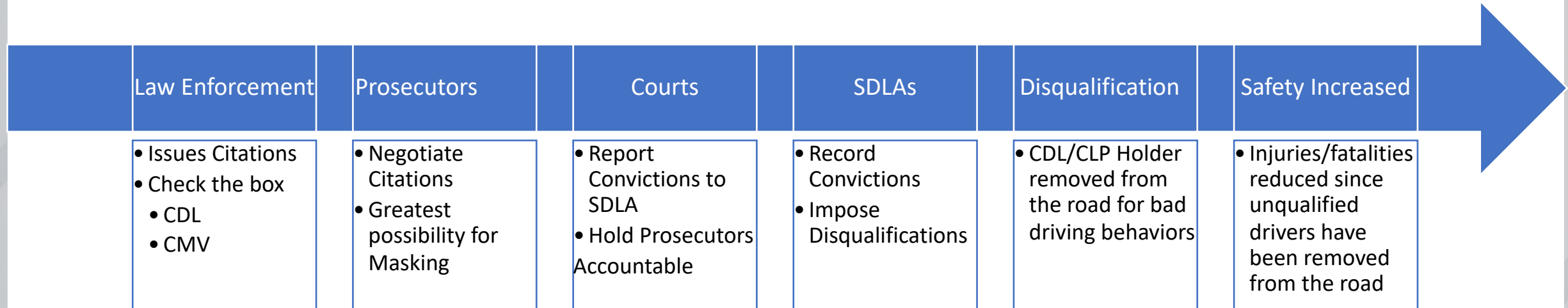
If a driver operates any motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a <i>separate incident within a 3-year period while operating a CMV</i> , a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for...				For a third or subsequent conviction of any combination of offenses in this Table in a <i>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...			
	60 days				120 days			
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit	60 days				120 days			
(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	60 days				120 days			

Disqualification: Serious Traffic Violations

- **Cumulative in nature**
 - 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

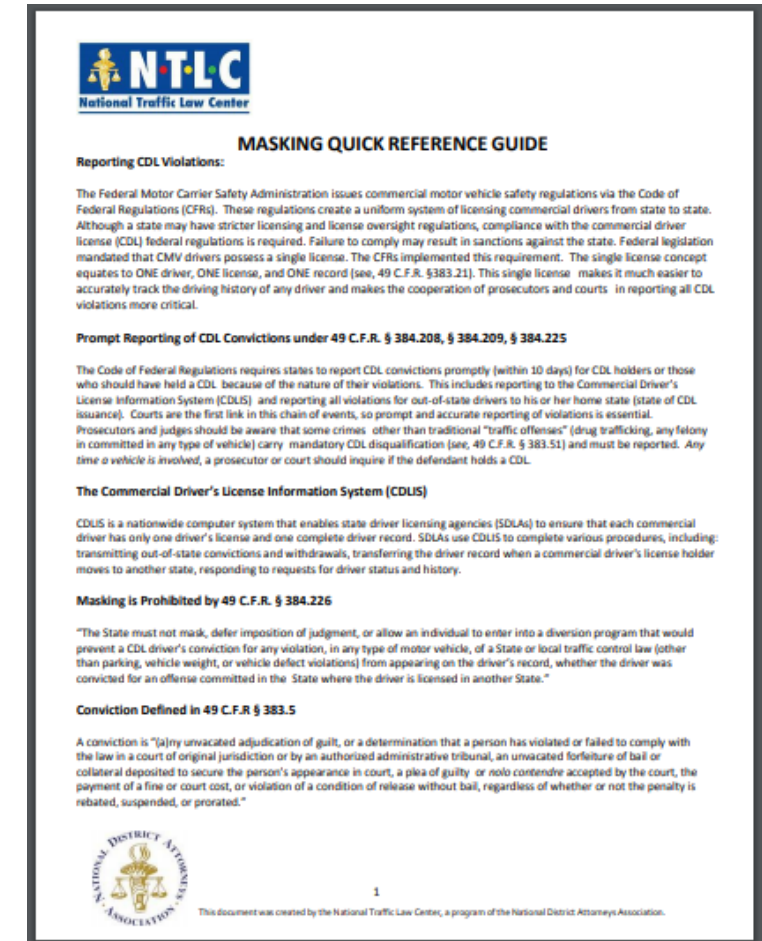
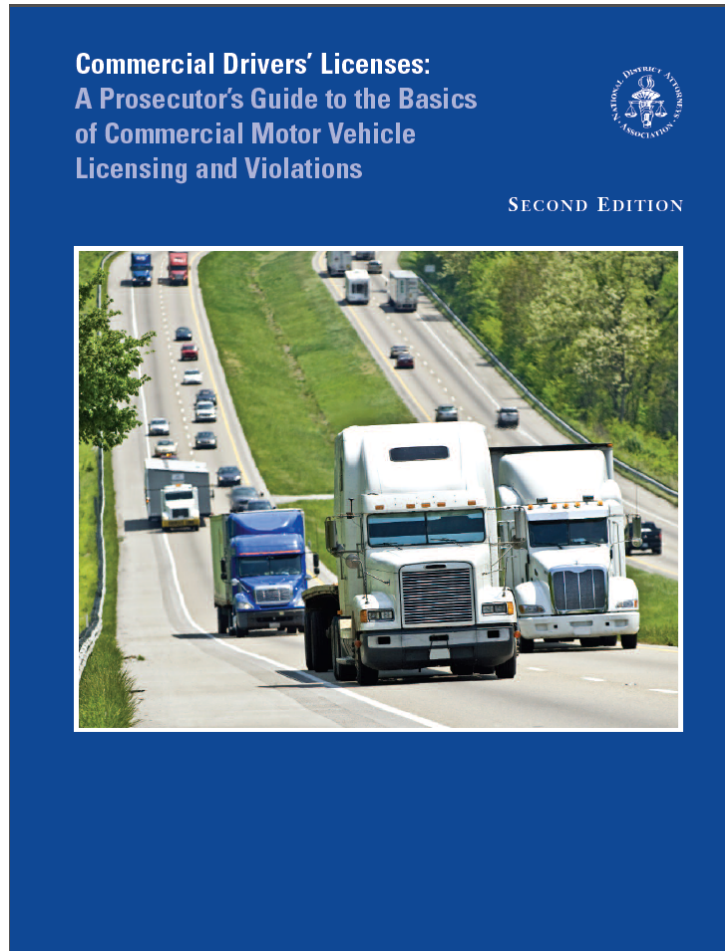


Accurate and Timely Reporting is Key!



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



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

Joanne Thomka, Director
jthomka@ndaajustice.org
(703) 519-1678

Jim Camp, Senior Attorney
jcamp@ndaajustice.org
(703) 519-1674

Bella Truong, Staff Attorney
btruong@ndaajustice.org
(703) 519-1651

National Traffic Law Center
National District Attorneys
Association
1400 Crystal Drive, Suite 330
Arlington, Virginia 22202

www.ndaa.org/ntlc_home.html

CAVEAT:

"This presentation
includes the works of others.
These works are included under the
fair use exemption of 17 U. S. C. 107.
The works have been prepared
according to the multimedia
fair use guidelines and
are restricted from
further use."