From Roadside to Record

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





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
Driver Behavior	Likelihood Increase
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%





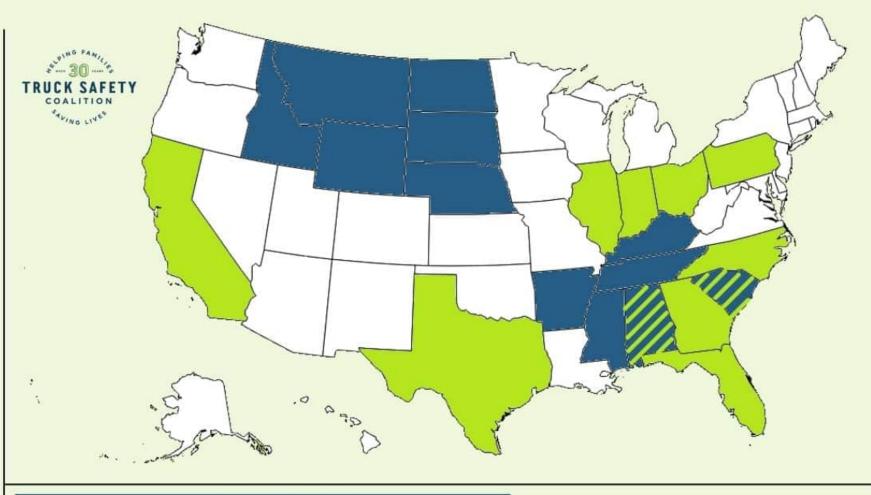




WORST FATAL TRUCK CRASH STATES IN 2020

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.
 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**

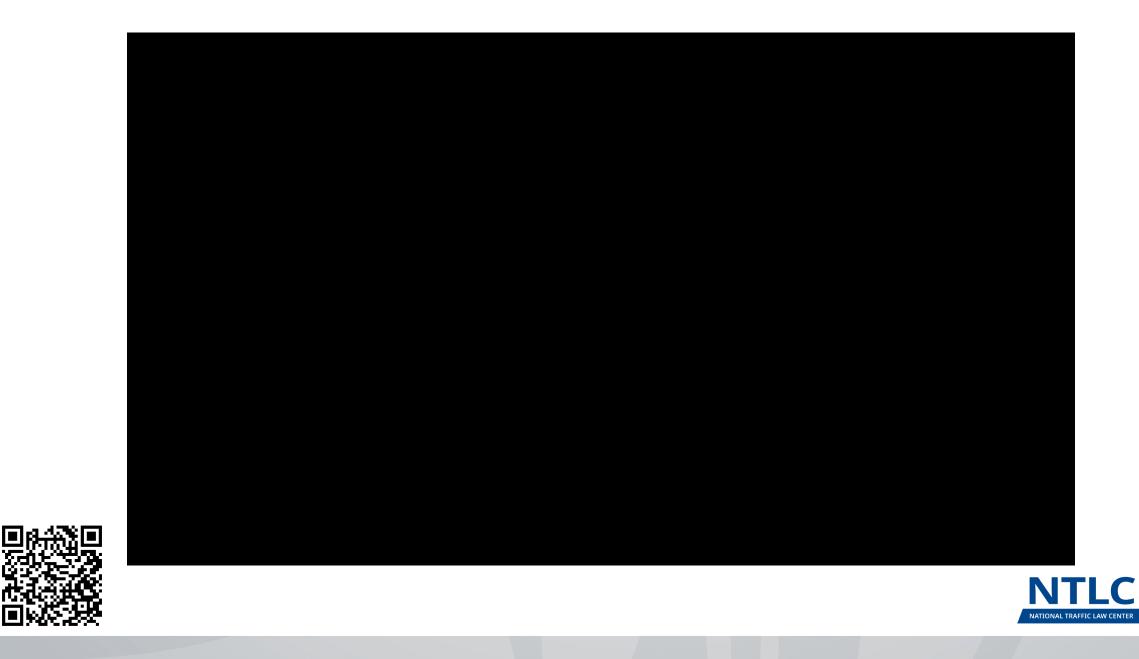


Federal Prohibition Against Masking Cont'd

- 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





NDAA

One State's Recent Data

41.63%

....of convictions checked had probable masking





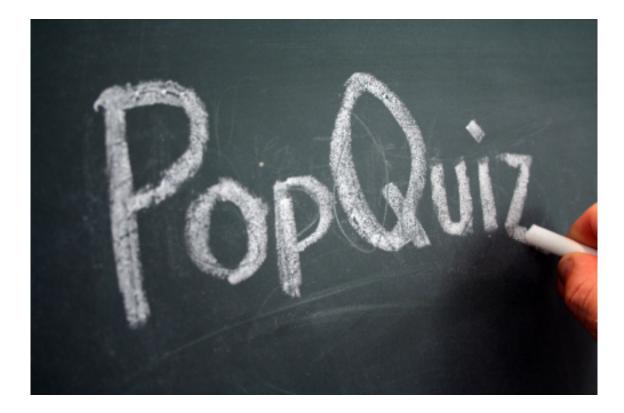
Counties with no citations to check





Counties with at least 1 probable masking violation









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."





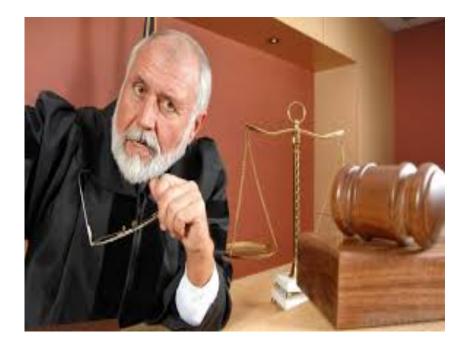
Prosecutor: "Your client is charged with **Reckless Driving as a** result of driving 70 mph in a 45-mph work zone. I'll give her a "parking on pavement" if she attends traffic school.





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

<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 C.F.R. § 384.401 (a) and (b) (2021)).

Withholding Millions in

Highway Funds

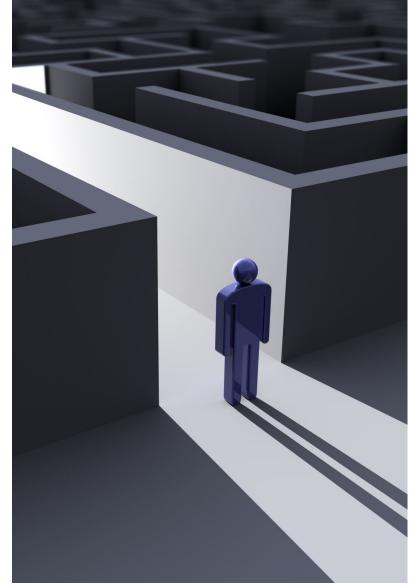
- Up to 4% of Federal-aid highway funds after 1st Year
- Up to 8% After 2nd Year and subsequent year(s) of noncompliance



49 C.F.R. 383.5 "Conviction" Defined –

•an unvacated adjudication of guilt,

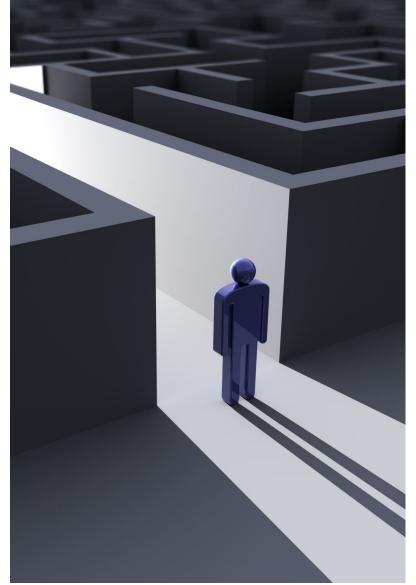
 or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal,





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





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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.

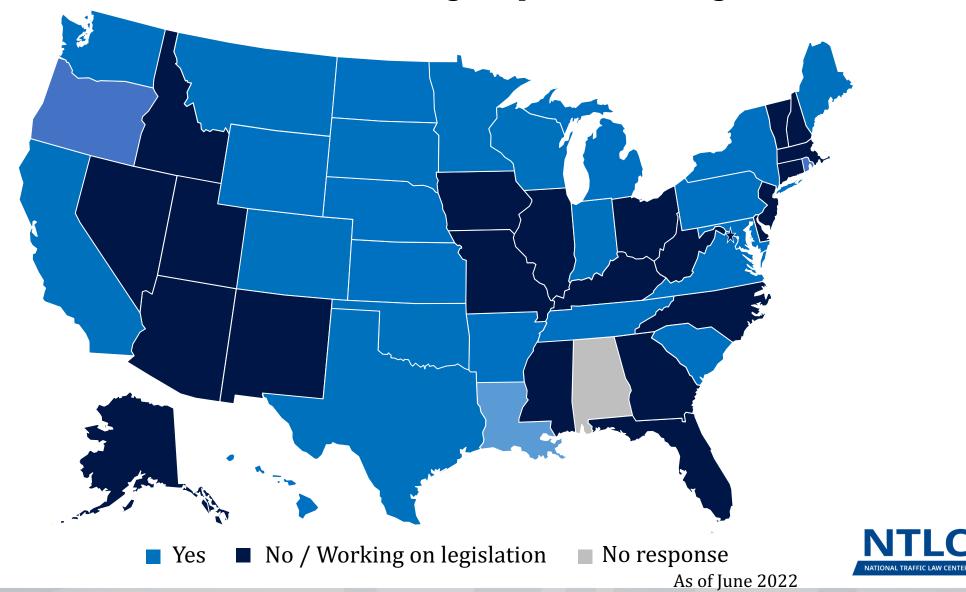






https://www.fmcsa.dot.gov/commercial-drivers-license/human-trafficking

Has your SDLA enacted human trafficking disqualification legislation? 383.51 Table 1 (10)



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
 - 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: (1) Speeding excessively, involving any speed of 24.1	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
kmph (15 mph) or more above the posted speed limit	60 dαys	60 days	120 days	120 days
(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

Cumulative in nature

- 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





NATIONAL TRAFFIC LAW CENTER

Accurate and Timely Reporting is Key!

Law Enforcement	Prosecutors	Courts	SDLAs	Disqualification	Safety Increased	
 Issues Citations Check the box CDL CMV 	 Negotiate Citations Greatest possibility for Masking 	 Report Convictions to SDLA Hold Prosecutors Accountable 	 Record Convictions Impose Disqualifications 	 CDL/CLP Holder removed from the road for bad driving behaviors 	 Injuries/fatalities reduced since unqualified drivers have been removed from the road 	



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 Traffic Law

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. Athough 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 Regulations requires status to report CDL consistions groupply (within 10 days) for CDL holds or those who should have held a CDL because of the rature 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 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 aware that some crimes other than traditional "Traffic Offenses" (drug trafficting, large felong 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's involved, a prosecutor or out should inquire if the defendant holds a CDL.

The Commercial Driver's License Information System (CDLIS)

CDLIS is a nationwide computer system that enables state driver licensing agencies (SDLAs) 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 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 (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 consistion is "jairy unvacated adjustation 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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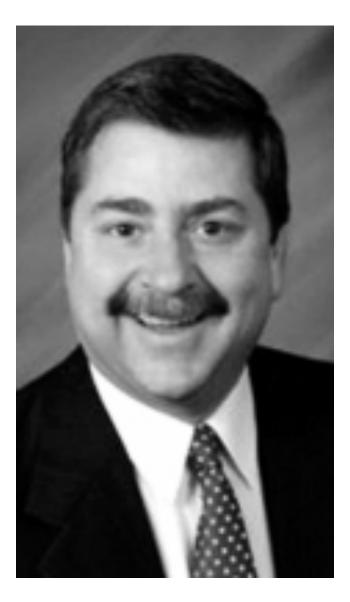
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