



BETWEEN the Lines

UPCOMING TRAININGS & CONFERENCES

NDAA is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDAA's virtual learning sessions at ndaa.org/training-courses/.

NDAA's Mastering Masking Digital Course/ On Demand Training
ndaa.org/training/mastering-masking-2/

NDAA's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training
ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/

NDAA's Prosecuting DUI Cases Online Course/ On Demand Training
ndaa.org/training/prosecuting-dui-cases/

NDAA's Pandemic Crimes: Investigating & Prosecuting Frauds & Scams During COVID
March 25, 2021 @ 11:00 am-12:45 pm (ET)

NDAA's Win Win Animal Abuse Prosecutions!
April 5, 2021 @ 1:00-2:30 pm (ET)

NDAA's Bringing the Crime Scene into Court: Presenting the Visual Trial
April 8, 2021 @ 2:00-3:30 pm (ET)

RESOURCES

Impaired Driving Resources
ndaa.org/programs/ntlc/

CDL-Related Resources
ndaa.org/programs/ntlc/commercial-drivers-license/

NDAA STAFF

Executive Director Nelson O. Bunn, Jr.
Chief Operating Officer Christine Mica

THE NATIONAL TRAFFIC LAW CENTER

Director
Joanne E. Thomka jthomka@ndaajustice.org

Senior Attorneys
M. Kimberly Brown mkbrown@ndaajustice.org
Romana Lavalas rlavalas@ndaajustice.org

Staff Attorneys
Erin Inman erinman@ndaajustice.org
Jim Camp jcamp@ndaajustice.org

The National Traffic Law Center is a division of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number 693JJ91950010 from the U.S. Department of Transportation National Highway Traffic Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.



Volume 29, Issue 3 | March 2021



Traffic Safety Initiatives: Safer Roadways through CDL and CMV Enforcement

The Important Role of Police Officers

By Romana Lavalas, Senior Attorney, National Traffic Law Center

Holding Commercial Driver's License (CDL) holders accountable for their driving behaviors by properly adjudicating and recording their traffic-related convictions saves lives.

While prosecutors and courts play important roles in the conviction reporting process, it is vital to understand that the process starts at the roadside, and, as such, the role of law enforcement cannot be overstated. After all, for convictions to be properly reported, citations must be issued by a patrol officer, a commercial vehicle enforcement (CVE) officer, or a Motor Carrier Safety Assistance Program (MCSAP) officer and then properly adjudicated through the court system.¹

Reprinted from *Police Chief Magazine*, Vol. 88, No. 2, pages 20-22, 2021. Copyright held by the International Association of Chiefs of Police, Inc., 44 Canal Center Plaza, Suite 200, Alexandria, VA 22314. Further reproduction without express permission from IACP is strictly prohibited.

Although CVE officers have regular contact with commercial driver license (CDL) holders and larger commercial motor vehicles (CMVs), non-CVE officers often do not. Many police officers who routinely engage in traffic enforcement are reluctant to enforce those same laws against the operators of large trucks and buses, of whom many are CDL holders. Stopping large trucks and buses presents unique challenges for non-CVE officers, including the longer distances these vehicles need to exit and to reenter the roadway; the significant height advantage the drivers of heavy vehicles have over an approaching officer's cruiser or motorcycle; the potential for dealing with special cargo (perishables, livestock) or disgruntled passengers once stopped; and, of course, the documents these drivers must maintain (logbooks or medical certificates).

The Federal Motor Carrier Safety Administration (FMCSA) is the agency charged with regulating safety for the commercial motor vehicle industry in the United States, as well as setting the minimum standards required for obtaining commercial licenses, which are issued by states. In order to encourage the enforcement of routine traffic offenses committed by the operators of large vehicles, FMCSA created the Large Truck and Bus Traffic Enforcement Training course to educate non-CVE officers on how to safely and effectively conduct routine traffic stops of large trucks and buses.²

For some police officers and even prosecutors, any traffic details related to CMV or CDL enforcement can seem tedious and an unnecessary hassle. Admittedly, when new police recruits join the force, it is unlikely that their idea of what it means "to protect and serve" their community involves traffic enforcement, let alone CMV traffic enforcement. Yet, traffic enforcement details are a prime opportunity for police officers to protect and serve their communities because traffic safety affects every community.

While studies show that between 2016 and 2017, the number of fatal traffic crashes in the United States decreased, the percentage of large trucks or buses involved in fatal crashes increased.³ In 2016, at least 11.8 percent of all fatal crashes involved at least one large truck or bus.⁴ In 2017, that percentage grew to 13 percent.⁵ The same trend exists for nonfatal crashes. In 2016, 7.4 percent of nonfatal crashes involved at least one large truck or bus; in 2017, that number grew to almost 8 percent. In addition, large truck and bus crashes are disproportionately represented among motor vehicle fatalities. For example, large trucks and buses comprise 9.8 percent of all vehicle miles traveled in 2017, but accounted for 13 percent of all traffic fatalities.⁶

Further, because of their large size and heavier cargo, crashes involving large trucks and buses and typical passenger vehicles tend to be fatal to the occupants of the non-CMV. According to the Insurance Institute for Highway Safety,

The largest number of motor vehicle crash deaths occur among occupants of passenger vehicles ... The likelihood of crash death varies markedly among these vehicle types according to size. Small/light vehicles have less structure and size to absorb crash energy, so crash forces on occupants will be higher. People in lighter vehicles are at a disadvantage in collisions with heavier vehicles [such as large trucks and buses].⁷

Conducting routine traffic stops on CMVs is one strategy that non-CVE officers can use to protect and serve their communities because it keeps unsafe drivers and poorly maintained large vehicles off the roads.

In addition, enforcement targeting large vehicles can yield results beyond traffic safety. Some opportunists have used large trucks to conduct criminal activity such as human smuggling, drug trafficking, and human trafficking. Unlike passenger vehicles whose interior compartments are easily viewed, large truck interiors can have hidden interior compartments (such as a sleeper berth) and they sit higher up on the road, making it more difficult to observe who or what may be inside the truck cab. Further, some semi-trailer attachments are large enough to hold several people or large caches of drugs. FMCSA recognizes these possibilities; therefore, in addition to its generalized Large Truck and Bus Enforcement Training, FMCSA also created the Drug Interdiction Assistance Program (DIAP).⁸ The training program emphasizes the detection of criminal conduct that can be related to large vehicles, such as drug trafficking. These trainings each deal with enforcement as it relates to the vehicles themselves; however, for the non-CVE officer, there are also enforcement actions that can be taken against the drivers of these large vehicles (typically, CDL holders) apart from the CMV operation.

Since commercial drivers are not always operating commercial vehicles, officers conducting routine traffic enforcement involving passenger vehicles are likely to come across a CDL holder operating a private vehicle. Traffic stops are particularly significant for CDL holders operating personal vehicles because driver behavior in a passenger vehicle can affect a professional driver's CDL privileges.⁹ For instance, under the CFR 49 § 383.51 (b) (1) (2), a CDL holder operating a non-CMV who is convicted of operating while intoxicated or under the influence of drugs, faces a mandatory disqualification of his or her CDL privileges for one year. For a second conviction of the same offense, the penalty is dramatically more substantial—a “lifetime” or 10-year revocation of the driver's CDL privileges.¹⁰

Routine traffic enforcement has a greater impact on CDL holders than on nonprofessional drivers because of federal and state penalties and prohibitions on these drivers when they violate traffic laws.¹¹ Even ordinary traffic offenses, such as speeding, impact CDL holders regardless of whether they are operating a CMV when stopped. For instance, if a CDL holder was convicted of two separate speeding tickets within a three-year period and both convictions were for traveling 15 miles per hour or more above the speed limit, the driver's CDL would be disqualified for 60 days.¹²

While the vast majority of CDL holders are law-abiding drivers, some CDL holders may rely on non-CVE officers to offer them a “roadside reduction” or let them off with a mere warning, simply because they have a CDL. The idea behind this expectation is that, by ticketing a CDL holder, the officer is endangering the livelihood of the driver because a conviction might lead to the loss of CDL privileges or the loss employment. However, to view things from this perspective places the result of the CDL holder's driving behavior on the officer, rather than on the driver. The reality is that the operator has put his or her driving privileges— and perhaps employment—at risk because of his or her own bad driving behavior (speeding, impaired driving, etc.).

Not only does routine traffic enforcement have a greater impact on CDL holders, but enforcement is also relevant to predicting crash risk for this group of drivers. A study published by the American Transportation Research Institute indicated that driving behaviors that some would consider minor can have serious effects on the likelihood of a future crash.¹³ For example, if a CMV operator had a conviction for “failure to use” or an “improper” signal on his or her driving record, that driver had an 82 percent increased crash likelihood.¹⁴ A prior “failure to keep a proper lane” conviction yielded an 83 percent increased crash likelihood.¹⁵

Only violations that are issued and properly adjudicated through the court system can be recorded on a driver's motor vehicle history and thereby lead to CDL disqualification by a state's driver's license authority (SDLA). CDL holders' motor vehicle records are used by police, prosecutors, and courts “to determine the threat posed by that driver and what remedial actions should be taken to correct [their] poor driving. Driver's histories are also relevant to those handling impaired driving cases, as well as serious or fatal crashes caused by impaired or reckless driving.”¹⁶ Further, potential employers rely on motor vehicle histories for CDL holders in order to make decisions regarding hiring, firing, and disciplining employees.

The goal of traffic enforcement is safer roadways. Traffic enforcement achieves this goal in two ways: driver deterrence and discipline. Drivers who receive citations for bad driving behaviors ideally are deterred from continuing that behavior. In addition, motorists who observe other drivers being pulled over or cited for their behavior may also be deterred. This secondary deterrence is the concept behind high-visibility enforcement programs. Driver discipline occurs through state regulations that impose sanctions on drivers convicted of bad driving behaviors. Many states have rules that impose a suspension or withdrawal of operating privileges if the motorist accumulates a certain number of points on their driving record or obtains too many speeding convictions within a certain period. SDLAs can impose this penalty because data systems allow the ticket number to be connected to the driver's motor vehicle record via a motorist's identification number.

For CDL holders, this system is even more important, because in addition to SDLAs tracking the driver's motor vehicle identification number, SDLAs must also connect this driver by linking two other critical pieces of information that a police officer typically provides: the type of license the driver holds and the type of vehicle the driver is operating. An officer, once determining a ticket will be issued, should indicate on the citation that the motorist who committed the offense has a CDL (the type of license the driver holds) or that the offense

occurred in a CMV (the type of vehicle the driver was operating). If the ticketing officer notes this information at the roadside, the conviction for that offense should be connected to the driver's record by the SDLA, leading to the proper sanctions (suspension or disqualification of CDL privileges). In this way, the goal of a safer roadway is achieved because a problem driver is removed from the road.

Former FMCSA administrator Raymond Martinez once said, "We all own safety."¹⁷ To achieve the goal of zero highway deaths by 2050, effective traffic enforcement for all drivers and vehicle types must occur. Therefore, it is imperative for non-CVE officers to realize that their role at the roadside can make a dramatic impact on the conviction reporting process and, by extension, overall traffic safety.

The National District Attorneys Association's National Traffic Law Center (NTLC) is a resource center for prosecutors, law enforcement officers, judges, and other stakeholders in the criminal justice system. "The mission of NTLC is to improve the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the compilation, creation, and dissemination of legal and technical information, and by providing training and reference services." The NTLC accomplishes its mission in large part through funding provided by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA).

Notes:

¹The MCSAP is a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs).

While not all CVE officers are MCSAP funded, for the purpose of this article, all civilians or law enforcement officers who are specifically responsible for commercial vehicle enforcement measures will be referred to as "CVE officers."

²Federal Motor Carrier Safety Administration (FMCSA), National Training Center, "Truck and Bus Enforcement."

³National Highway Traffic Safety Administration (NHTSA), *Traffic Safety Facts 2017: A Compilation of Motor Vehicle Crash Data* (Washington, DC: NHTSA, 2019).

⁴FMCSA, *Pocket Guide to Large Truck and Bus Statistic 2018* (Washington, DC: FMCSA, 2018).

⁵FMCSA, *Pocket Guide to Large Truck and Bus Statistics 2019* (Washington, DC: FMCSA, 2020).

⁶FMCSA, *Pocket Guide to Large Truck and Bus Statistics 2019*.

⁷Insurance Institute for Highway Safety, "Fatality Facts 2018 Passenger Vehicle Occupants," citing Sean M. Puckett and John C. Kindelberger, *Relationships between Fatality Risk, Mass, and Footprint in Model Year 2003-2010 Passenger Cars and LTVs – Preliminary Report*.

⁸FMCSA, National Training Center, "Drug Interdiction Assistance Program – DIAP."

⁹49 C.F.R. § 383.51.

¹⁰Reinstatement after lifetime disqualification. "A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) must not be reinstated." 49 C.F.R. § 383.51 (a)(6).

¹¹49 C.F.R. § 383.51.

¹²Regulatory Guidance for 49 C.F.R. 383.51—Disqualification of Drivers – General Questions

Question 1:

- a. If a CDL holder was convicted of one “excessive speeding” (15 or more miles over the speed limit) violation in a CMV and the same violation in his/her personal vehicle, would the driver be disqualified? Or,
- b. If a CDL holder was convicted of two separate “excessive speeding” (15 or more miles over the speed limit) violations in his/her personal passenger vehicle, would the driver be disqualified?

Guidance: Yes, in both cases, if the second offense was within 3 years of the first. Whether the vehicle is a CMV is irrelevant. Commercial Driver’s License Standards, Requirements and Penalties, Regulatory Guidance, 84 FR 8464-01.

¹³Caroline Boris and Dan Murray, *Predicting Truck Crash Involvement: 2018 Update* (Arlington, VA; American Transportation Research Institute, 2018).

¹⁴Boris and Murray, *Predicting Truck Crash Involvement: 2018 Update*, 15.

¹⁵Boris and Murray, *Predicting Truck Crash Involvement: 2018 Update*, 15.

¹⁶Peter Grady et al., *Commercial Drivers’ Licenses: A Prosecutor’s Guide to the Basics of Commercial Motor Vehicle Licensing and Violations*, 2nd ed. (Arlington, VA: National District Attorneys Association, 2017), 41.

¹⁷Collaboration the Key to Safety, FMCSA’s Martinez Says at ATA Conference, *The Trucker*, October 7, 2019.

Romana Lavalas has worked as a senior attorney for the National District Attorneys Association’s, National Traffic Law Center since 2017. She provides education and technical assistance to prosecutors, judges, law enforcement and other allied professionals and develops resource materials addressing commercial drivers’ license issues in the criminal justice system.