



Between the Lines

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April 2014

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20th Annual Training
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**2014 GHSA Annual Meeting
Highway Safety & Technology:
Safely Navigating the
Road Ahead**
Grand Rapids, MI
August 25–28, 2014

Making The Connection: Felony Offenses and Commercial Driver License Sanctions

by Kristen Shea¹

State prosecutors are expected to master state code, evidentiary rules, technical evidence and court procedures. Many learn from more experienced attorneys and adopt practices whose origins are shrouded in mystery and whose continuation is justified by a curt “because this is the way we have always done it.” Operating within these conditions, it is no surprise that some relatively obscure, albeit mandatory, statutes are rarely, if ever, enforced. This article explores the mandatory commercial driver’s license (CDL) disqualification rule, which has been adopted by most states but is largely unknown by most prosecutors and courts, and provides suggestions on how to ensure traffic safety through improved compliance.

Although large truck and bus involved traffic fatalities comprise almost ten percent of all traffic fatalities, relatively little commercial motor vehicle (CMV) or CDL training is offered for prosecutors, law enforcement and court staff. There is a similar dearth of training related to the function of court clerks and the reporting of driver license related convictions to the state driver licensing agency (SDLA). This gap in training results in prosecutors who may be unaware of the strict reporting guidelines imposed on the SDLA by federal funding agencies. The problem is further complicated when non-traffic related criminal offenses carry license related sanctions and the underlying offenses are not handled by traffic-focused prosecutors.

Any prosecutor who regularly handles traffic offenses, particularly alcohol and drug impaired driving cases, deals with state imposed

mandatory license revocation or suspension. Specialized traffic prosecutors are also familiar with the additional sanctions and sentencing restrictions imposed on a defendant who holds a commercial driver’s license. The regulations containing these additional sanctions are published in Title 49 of the Code of Federal Regulations, promulgated by the Federal Motor Carrier Safety Administration (FMCSA). If a state fails to comply with FMCSA commercial motor vehicle operator licensing and oversight regulations, this failure can result in the loss of highway funding.² FMCSA regulations are typically adopted by reference to the entirety of 49 CFR §383 and 49 CFR §384. In some cases, these regulations, or portions of them, are specifically codified within state statutory language.³

One portion of 49 CFR §383 mandates the disqualification of a driver’s CDL if he or she commits certain offenses. The disqualifications are not discretionary and the minimum length of disqualification for each offense is specified. The mandatory disqualification period is increased if subsequent convictions for offenses detailed in 49 CFR §383.51 occur. This code section differentiates major offenses and serious offenses. Multiple convictions for serious offenses within a specified period of time will result in a period of disqualification. Any conviction for a major offense, however, results in the automatic disqualification of the offender’s CDL. The first conviction requires a one year CDL disqualification while a second or subsequent conviction for the same or any other major offense carries a lifetime CDL

disqualification.⁴ States have the discretion to reinstate the CDL of a driver who has received a lifetime disqualification only after a 10 year period and “if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State.”⁵

Most of the major offenses that trigger mandatory CDL disqualification are commonly associated with driving behaviors. Offenses including impaired driving, leaving the scene of an accident and implied consent violations carry CDL disqualification regardless of the type of vehicle the defendant was operating at the time of the offense (commercial or non-commercial motor vehicle). Additionally, operating a commercial motor vehicle with a breath or blood alcohol concentration of .04% or greater is a major offense and results in the same period of CDL disqualification.⁶ Typically, an offense that automatically disqualifies a driver’s license will be codified in a state’s traffic or motor vehicle code.

Generally, a traffic code offense will alert the court clerks that it may be mandatory to send the conviction to the SDLA. The SDLA must receive the conviction so a defendant’s license status can be properly updated and any disqualification noted on the driver’s history. Unlike driving related offenses, most crimes do not carry the traffic or motor vehicle code number. Without the familiar traffic code, the clerk of the court may have no way to know if a particular case involved a vehicle. Federal regulation, however, does require that some non-traffic codified, criminal offenses automatically trigger CDL disqualification. This anomaly can cause a communication breakdown between the court and the SDLA. If the court does not report the conviction to the SDLA, there is little chance it will be discovered or that an appropriate CDL disqualification will be imposed.

There are two levels of CDL disqualification that exist for non-driving related felonies committed while operating any type of motor vehicle. A defendant convicted for a first or subsequent offense of “(u)sing the vehicle in the commission of a felony involving manufacturing distributing, or dispensing a controlled substance” must have his or her CDL disqualified for life.⁷ Controlled substances, however, need not be involved for a felony conviction to trigger a mandatory CDL disqualification. Rather, the conviction need only be for an offense in which the defendant was “using the vehicle to commit a felony.”⁸ The type of vehicle is irrelevant for the felony based disqualification, which must be imposed whether the defendant was using a commercial or non-commercial vehicle.

The regulatory language regarding mandatory CDL disqualifications for felony offenders who used vehicles to commit their offenses produces a potentially broad group of offenders whose convictions must be conveyed to the SDLA for disqualification. FMCSA data indicates there are four to six million CDL holders actively working in the transportation industry and millions more who retain CDLs in the United States. If a defendant is one of those people, his or her felony case may require special scrutiny. If the offense was committed through the use of a motor vehicle, it must be reported. An almost endless variety of felony crimes may be committed using a motor vehicle. Kidnapping, rape, sale of stolen property and intentional assaults are examples of crimes that may have been accomplished through the use of a vehicle. The determination of vehicle involvement must be made on a case by case basis and reported accurately and promptly to the SDLA.

If vehicle involvement is determined, the judgment or conviction paperwork should include language appropriately notifying the SDLA that this conviction has CDL implications.

While the felony based disqualification is not a traditional traffic safety regulation such as requiring seat belt usage or limiting speed, this disqualification requirement can serve an important public safety function. Headlines decry police pursuits as dangerous and unnecessary. Drivers, who operate oversized trucks, carry passengers or transport hazardous materials pose an increased risk to the public. Case law and state statutes allow courts to hold these drivers to a higher standard of behavior.⁹ Drivers who engage in serious crimes while using a motor vehicle may pose a greater danger than drivers who do not engage in similar conduct.

Accurately imposing mandated sanctions on CDL holders who use motor vehicles in the commission of felonies requires the education and participation of law enforcement, prosecutors, judges, court clerks and state licensing authorities. Police officers should note a defendant’s CDL status on whatever arrest report, charging instrument or other document that will eventually reach the prosecutor or court. Although uniform traffic citations normally provide space for designating an offense as involving a CDL holder or commercial vehicle, non-traffic charging instruments or reports may not provide this space as a prompt. In that case, law enforcement officers should note that a defendant possessed a CDL at the time of the offense wherever on the report or charging instrument it will be visible to the prosecutor or court.

A prosecutor should determine what state statutory or regulatory authority governs the commission of felonies with motor vehicles. In some cases, a state may create a separate criminal offense for the use of any motor vehicle to commit a felony by either a CDL holder or a non-CDL holder.¹⁰ If the state has specifically codified the mandatory revocation upon conviction of a motor vehicle involved felony, it may be appropriate to indicate the relevant language on any plea or disposition paperwork provided to the court. If the use of a motor vehicle to commit a felony is a separate criminal offense, the prosecutor may choose to pursue that charge. However the case is charged or disposed, the prosecutor should notify the presiding judge that the underlying felony offense involved both a CDL holder and the use of a motor vehicle.

If the court makes the legal or factual determination that a felony conviction involved both a CDL holder and the use of a motor vehicle, the court should include these findings on disposition paperwork. Court clerks can be notified that the case, while not designated as a traffic offense by code, involves mandatory licensing disqualifications that should be transmitted to the SDLA. Time is of the essence when reporting CDL related convictions. Strict federal regulations require that convictions for CDL holders be reported promptly to the SDLA. This includes the requirement to report convictions within ten days to out of state licensing authorities when dealing with a driver licensed in a different state.¹¹

To determine if a jurisdiction is commonly identifying and reporting felonies involving CDL holders and the use of a motor vehicle, a prosecutor can inquire with the SDLA to determine if it is receiving notice of these offenses and imposing the correct disqualification periods. If this is not the common practice of a jurisdiction or state, corrective actions should be taken to educate all parties involved in the identification, adjudication and reporting process. This will ensure that the state remains in compliance with

federal regulations and that offending drivers are disqualified for the appropriate period of time. More importantly, adherence to this little known regulation can keep potentially dangerous drivers off the roads and possibly save a life.

Endnotes

- 1 Kristen Shea is a Senior Attorney with the National Traffic Law Center, a program of the National District Attorneys Association.
- 2 49 CFR §384.401(2013). This section states that for the first year of non-compliance, up to five percent of Federal-aid highway funding may be withheld. Up to ten percent of total funding is at risk for second and subsequent years of non-compliance.
- 3 Ohio is a state that has opted to codify FMCSA promulgated regulatory language. OH. Rev. Code Ann. § 4506.15 (2012) adopts language substantially similar to 49 CFR §383.51 (2013) which mandates the disqualification of a CDL for specified periods of time depending on the underlying offense that triggers the disqualification. Ohio goes further than the mandatory disqualifications and criminalizes the violations as first degree misdemeanors.
- 4 49 CFR §383.51 (2013). If a driver is transporting hazardous materials as defined in 49 CFR §383.5, the disqualification period is extended to three years for the first offense.
- 5 49 CFR §383.51(a)(6) (2013). The regulatory language in this section does not include any explanation or guidance related to the appropriateness of any particular type of rehabilitation program or what would constitute voluntary entry into a program.
- 6 49 CFR §383.51 (2013).
- 7 49 CFR §383.51 (2013). See, Table 1 (9). Unlike convictions for subsections (1) through (8) of this section, a conviction for subsection (9) carries triggers an automatic disqualification for the first offense. The driver convicted under (9) will never be eligible for reinstatement regardless of time. The disqualification is permanent.
- 8 49 CFR §383.51(6).
- 9 49 CFR §384.226 imposes strict reporting requirements on courts adjudicating offenses involving CDL holders. Most states have adopted policies preventing CDL holders from participating in traffic offense diversion programs regardless of the vehicle type involved in the underlying offense. Although the disparate treatment afforded CDL and non-CDL holders has been resisted, many appellate courts have upheld the disparity as logically related to the additional risk posed by commercial vehicle operators. For a more detailed discussion of this body of case law, see *Unmasking CDL Convictions Between the Lines* Vol 9 2011.
- 10 Tenn. Code Ann. § 55-50-501 (2013). The State of Tennessee, for instance, requires the revocation of both CDL holders and driver's with a chauffeur license when a driver is convicted of a felony offense is committed through the use of a motor vehicle.
- 11 49 CFR §384.208 (2013).

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