



## 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 (CFRs). These regulations create a uniform system of licensing commercial drivers from state to state. Although 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. Federal legislation mandated that CMV drivers possess a single license. The CFRs implemented this requirement. The single license concept 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 states 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 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 trafficking, 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)

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, vehicle 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 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 authorized 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 prorated."



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DUI	Prosecutor allows a plea conditioned upon alcohol treatment 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 a lesser charge, because driver complains his/her CDL will be revoked if convicted of the original citation.	Yes.	If no legal basis exists to the withdraw plea and enter a lesser plea, and withdrawal of the plea was based solely on sympathy, this is Masking.
Failure to Yield	None.	Court convicts but allows traffic school in lieu of reporting conviction.	Yes.	This practice is called diversion. Allowing driver, after adjudication of guilt to perform actions that will result in conviction being reduced/dismissed is prohibited.

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DUI	Dismisses case because of insufficient evidence.	None.	No.	Prosecutor (or judge) may dismiss case for factual or legal inadequacies. 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.	This practice is known as deferral. An adjournment pending dismissal is prohibited. This action prevents the timely reporting of a conviction.
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. <b>See tables in 49 C.F.R §383.51.</b>
Failure to obey a traffic device	Prosecutor amends charge to Defective Muffler. Defective muffler ticket is filed with the court.	Court accepts plea to Defective Muffler and fine is paid.	Yes.	Amending a charge prior to filing in court constitutes Masking, if no legal/factual basis exists to do so. Amending charge to a charge for which no probable cause exists may be ethically questionable.





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Leaving the Scene of a Collision	None.	Driver makes charitable donation to Mothers 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 (without legal/factual basis to do so) predicated on charitable donations is prohibited, and <u>may</u> be considered ethically questionable.

*\*This list is not meant to be exclusive. State terminology may differ.*

*Every state that accepts federal highway funding is required to comply with 49 CFR 384.226, the "Prohibition on Masking Offenses." Both federal and state specific CDL Laws should be consulted when dealing with CDL and/or CMV cases.*

### ||-Additional CDL Resources-||

National Traffic Law Center: [www.ndaa.org/ntlc\\_home.html](http://www.ndaa.org/ntlc_home.html)

Federal Motor Carrier Safety Administration: [www.fmsca.dot.gov](http://www.fmsca.dot.gov)

National Judicial College: [www.judges.org](http://www.judges.org)

National Center for State Courts: [www.ncsc.org](http://www.ncsc.org)

American Association of Motor Vehicle Administrators: [www.aamva.org](http://www.aamva.org)

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