

Masking

NTLCO

NATIONAL TRAFFIC LAW CENTER



CAVEAT:

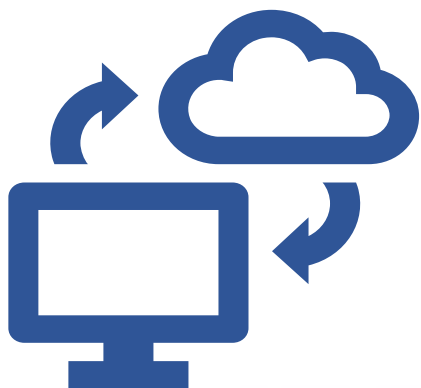
"This presentation includes the works of others. These works are included under the fair use exemption of 17 U. S. C. 107. The works have been prepared according to the multimedia fair use guidelines and are restricted from further use.



One Driver.



One License.

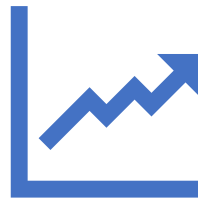


One Record.

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

Commercial Vehicle Safety Alliance (CVSA) “Operation Safe Driver Week” 2020

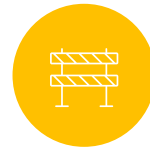
Top 10 Citations Issued



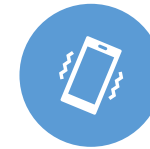
Speeding



No Seatbelt



Failure to Obey
Traffic Device



Using a Handheld
Phone/Texting



Improper Lane
Change



Improper Passing



Following Too Closely



Drugs/Alcohol



Inattentive/Careless
or Reckless



Failed to Yield Right
of Way

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

COURTESY: LEGACY FORD



Backlot 2

Commercial Vehicle Safety Alliance (CVSA) “International ‘Roadcheck’” 2020

Out of Service Vehicle Conditions



Brake Systems

Tires

Lights

Cargo Securement

Brake Adjustment



Table 6: Comparison of Top 10 Predictors of Future Crash Involvement

Rank	Driver Behavior and Associated Increase in Future Crash Probability		
	2005	2011	2018
1	A Reckless Driving violation (325%)	A Failure to Use / Improper Signal conviction (96%)	A Reckless Driving violation (114%)
2	An Improper Turn violation (105%)	A Past Crash (88%)	A Failure to Yield Right of Way violation (101%)
3	An Improper or Erratic Lane Change conviction (100%)	An Improper Passing violation (88%)	A Failure to Keep in Proper Lane conviction (83%)
4	A Failure to Yield Right of Way conviction (97%)	An Improper Turn conviction (84%)	A Failure to Use / Improper Signal conviction (82%)
5	An Improper Turn conviction (94%)	An Improper or Erratic Lane Change conviction (80%)	A Past Crash (74%)
6	A Failure to Maintain Proper Lane conviction (91%)	An Improper Lane / Location conviction (68%)	An Improper Lane / Location conviction (72%)
7	A Past Crash (87%)	A Failure to Obey Traffic Sign conviction (68%)	An Improper Pass conviction (70%)
8	An Improper Lane Change violation (78%)	A Speeding More Than 15 Miles over Speed Limit conviction (67%)	A Reckless / Careless / Inattentive / Negligent Driving conviction (69%)
9	A Failure to Yield Right of Way violation (70%)	Any conviction (65%)	An Improper or Erratic Lane Changes conviction (66%)
10	A Driving Too Fast for Conditions conviction (62%)	A Reckless / Careless / Inattentive / Negligent Driving conviction (64%)	An Improper Lane Change violation (63%)

Table 4: Summary of Crash Likelihood for All Data Analyzed

If a driver had:	The crash likelihood increased:	Sig
A Reckless Driving violation	114%	**
A Failure to Yield Right of Way violation	101%	***
A Failure to Keep in Proper Lane conviction	83%	**
A Failure to Use / Improper Signal conviction	82%	**
A Past Crash	74%	***
An Improper Lane / Location conviction	72%	***
An Improper Pass conviction	70%	**
A Reckless / Careless / Inattentive / Negligent Driving conviction	69%	***
An Improper or Erratic Lane Changes conviction	66%	***
An Improper Lane Change violation	63%	***
An Hours-of-Service violation	50%	***
An Improper Turn conviction	49%	*
A Following Too Close conviction	46%	**
A Speeding violation	45%	***
A False or No Log Book violation	45%	***
A Disqualified Driver violation	44%	***
Any conviction	43%	***
A Speeding More Than 15 Miles over Speed Limit conviction	40%	***
A Speeding 1 to 15 Miles over Speed Limit conviction	38%	**
Any Moving violation	35%	***
A Seat Belt violation	33%	***
A Failure to Obey Traffic Control Device violation	30%	***
Any OOS violation	29%	***
A Failure to Obey Traffic Sign conviction	25%	**
A Driving Too Fast for Conditions conviction	25%	*
A Size and Weight violation	20%	***
A Failure to Obey Traffic Signal / Light conviction	20%	*
A Reckless Driving conviction		<i>ns</i>
An Improper Turn violation		<i>ns</i>
A Failure to Yield Right of Way conviction		<i>ns</i>
An Improper Passing violation		<i>ns</i>
A Following Too Close violation		<i>ns</i>
A Medical Certificate violation		<i>ns</i>
A Failure to Obey Yield Sign conviction		<i>ns</i>
A Failure to Obey Warning Light / Flasher conviction		<i>ns</i>

to be best in any
point of view.

Conviction [kən
judgment of a jur
is guilty of a crim
strong belief in s

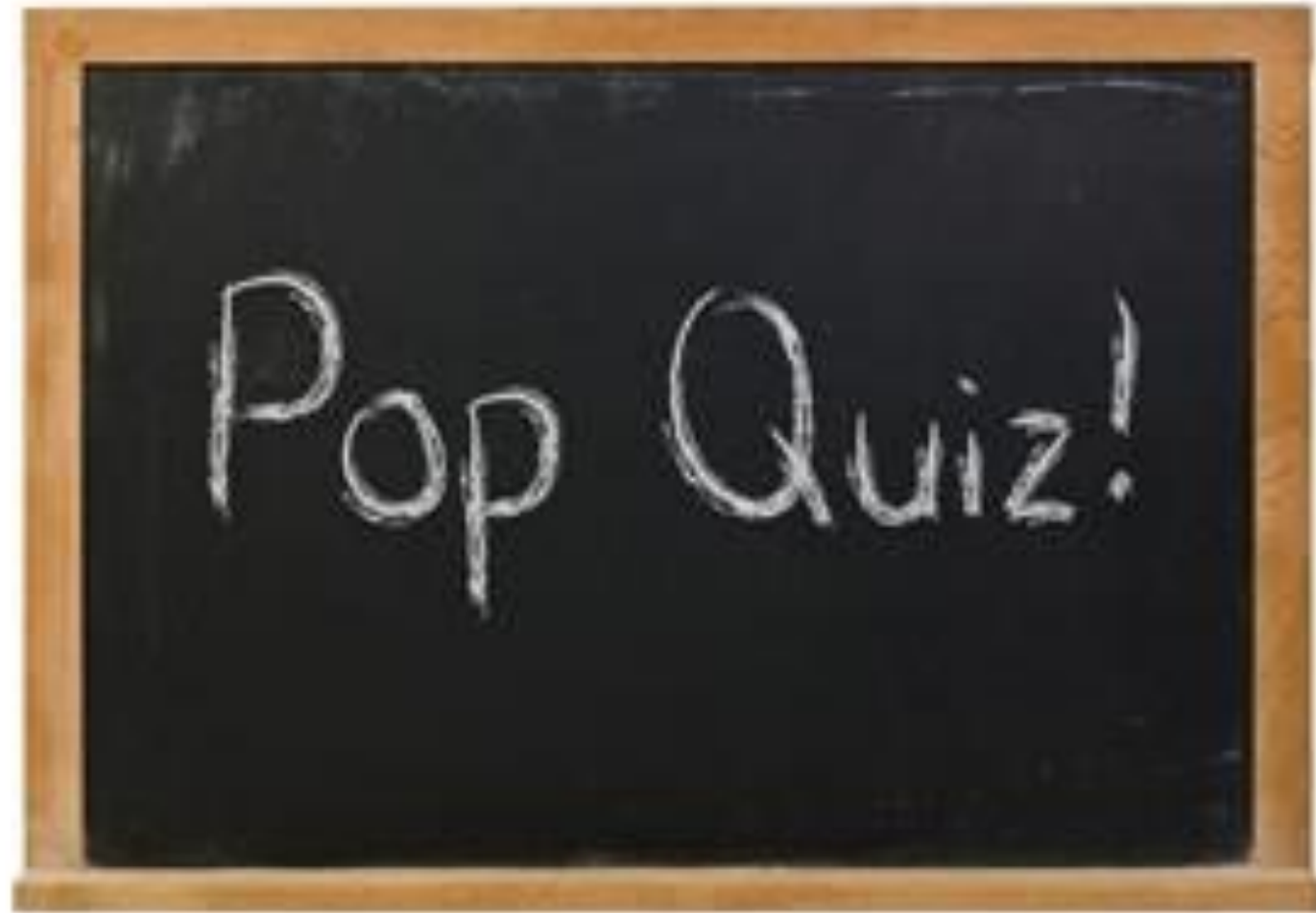
Conviction Defined

49 CFR 383.5

- An unvacated **adjudication of guilt**
- A determination that **a person has violated or failed to comply with the law** in a court of original jurisdiction **or an authorized administrative tribunal** (DMV)
- An unvacated **forfeiture of bail or collateral** deposited to secure a person's appearance in court
- A plea of **guilty or nolo contendere** (no contest) accepted by the court

Conviction Defined Cont'd

- The **payment of a fine, or court cost** (fees imposed by a court [at the conclusion or as part of the final resolution of the case] intended to cover the court's expense of handling the case)
- A **violation of a condition of release without bail**, regardless of whether or not the penalty is rebated, suspended, or probated
 - Example: Failure to appear in court, failure to pay fine, and/or failure to comply with a court mandate





Administrative Law Judge determines at an Administrative Hearing the Defendant violated Implied Consent Law.

Is this a conviction?

Yes.

A “determination that a person has violated or failed to comply with the law, by an authorized administrative tribunal,” is considered a conviction under the CFR.

After arraignment, Defendant absconds. Judge signs bail forfeiture.

Is this a conviction?



Yes.

An “**unvacated forfeiture of bail**” is also considered a conviction under the CFR.



Defendant entered into Diversion.
Defendant paid a Community Service fee.
The case is dismissed.

Is this a conviction?

Yes.

In this instance, a dismissal does result in a conviction under the CFR. The fact that the defendant paid a community service fee is what qualifies for the conviction.

The definition of conviction under the CFR includes,
“the payment of a fine or court cost.”

The fee for community service counts as a court cost associated with the administration of the diversion program.



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

Defendant is ordered by Court to go to pretrial release supervision.
Defendant fails to appear.

Is this a conviction?

Yes.

Under the CFR, a **violation of a [court's] condition of release without bail,**" is considered a conviction.

If the court determines that the defendant is in violation of a condition of the defendant's release, that determination is a conviction.

Felony Convictions w/ MV's

- Not only traffic violations, but felonies committed with a CMV, (or by CDL holder in non-CMV) has CDL ramifications:

Felony Convictions w/ MV's



Felony Convictions w/ MV's



Felony Convictions w/ MV's



Felony Convictions w/ MV's



HOME [NEWS](#) DRIVERS ADVERTISE CONTACT

Truck inspection on NYS Thruway leads to driver arrest on weapons charges

By Ashley - December 15, 2020



New York State Police (NYSP) arrested a truck driver after a commercial vehicle inspection led to the discovery of a several semi-automatic weapons.





(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

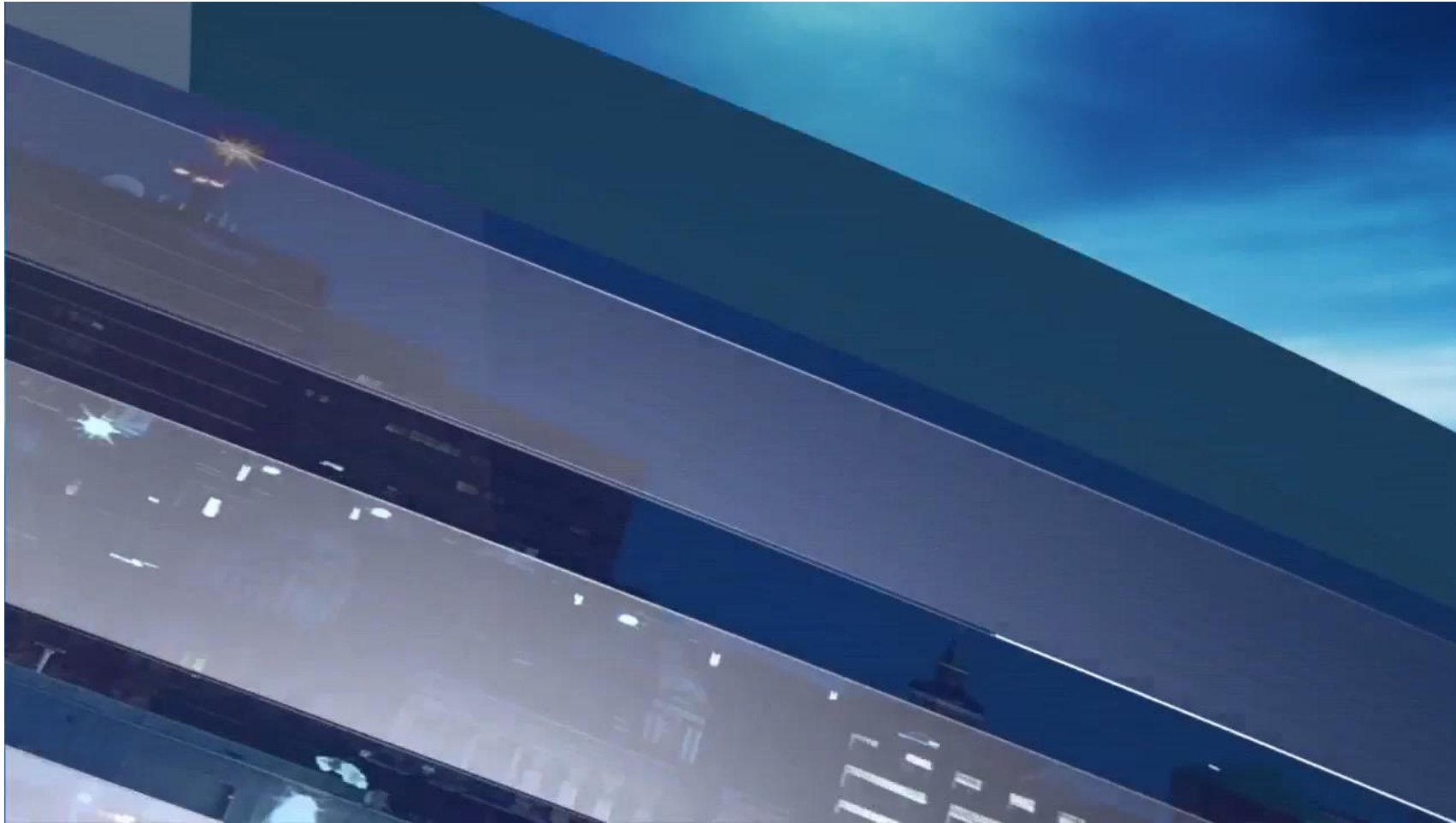
- For **ANY violation** of a State or local traffic control law
(*except parking, vehicle weight or vehicle defect*)
- In **ANY vehicle**
- **From** appearing on **CDL* Holder's driving record**
- Whether or not convicted in home state or out-of-state

* Or CLP holder

Actions Constituting Masking

- Deferral and Diversion Programs:
 - Permitting a CDL Holder, after determination of guilt, to perform actions that will result in conviction being downgraded or erased
 - Pre-trial programs prior to a preliminary judgment being entered to complete a program that will result in a charge being downgraded, dismissed or prevent the entry of a preliminary judgment
 - Examples: Community Service, Traffic School, Drug/DUI Court, Adjourment in Contemplation of Dismissal

Masking - Why it Matters





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 has a CDL and is charged with DWI in his personal vehicle. I’ll reduce it to reckless driving.”



Prosecutor: “Your client is charged with DWI in his personal vehicle but relinquished his CDL before arraignment. Since he no longer has a CDL, I will agree to a deferral.”



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.



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.”



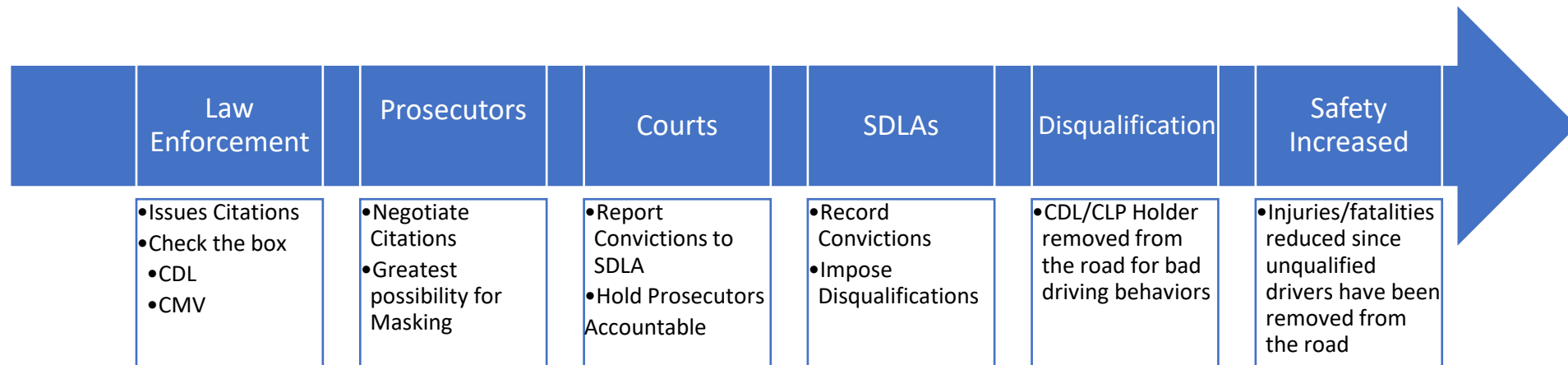
Police Officer pulls over a driver for speeding in a non-CMV vehicle. Instead of issuing a speeding ticket, the officer issues a warning because the driver has a CDL.

Not Masking

Judges and Prosecutors Maintain Authority and Discretion to:

- Negotiate Dispositions and
- Dismiss Charges that are:
 - Unsupported By Evidence
 - Constitutionally Infirm
 - Procedurally Improper

Accurate and Timely Reporting is Key!



Accurate and Timely Reporting is Key!

Courts must report convictions to the DMV promptly, within 10 days of the conviction.

49 CFR 384.225(c) – convictions in the state

49 CFR 384.209(c) – convictions out-of-state

Consequences of State Non-Compliance

Withholding Millions in Highway Funds

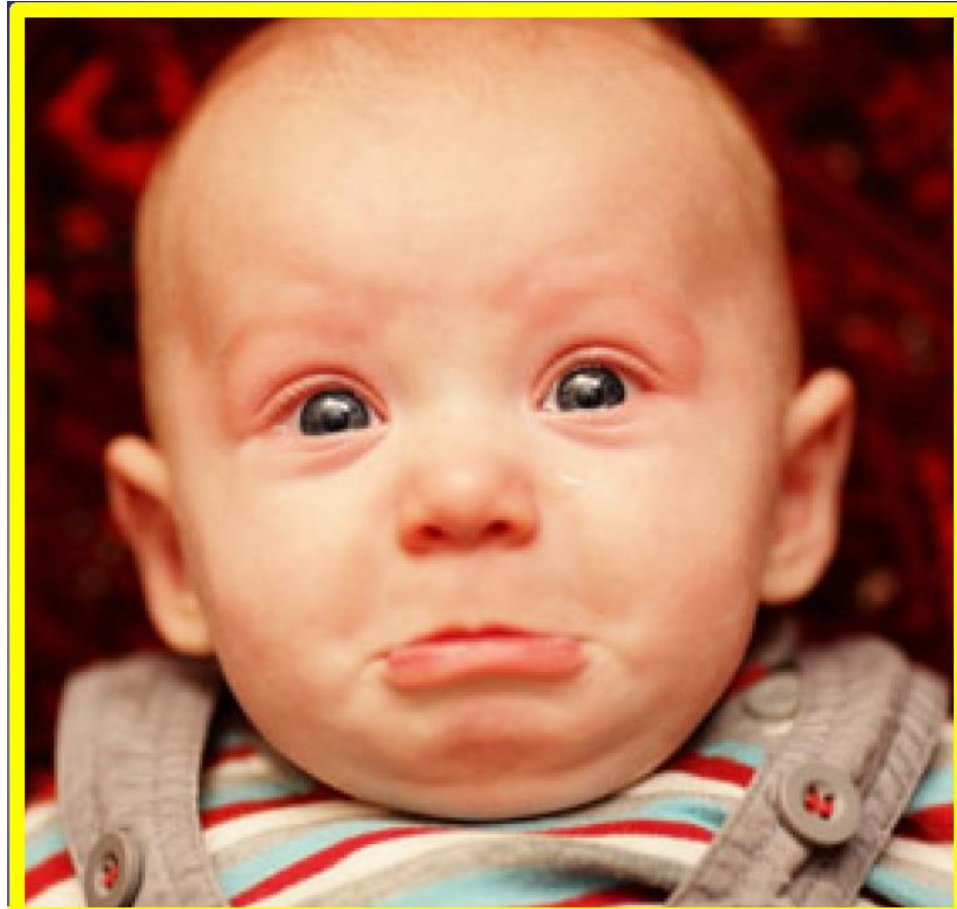
- Up to 4% After 1st Year
- Up to 8% After 2nd Year

scrimmage, illi
disqualification
crippling, debi
tration, paral

Accurate and Timely Reporting is Key!



But I'm gonna lose my CDL!



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)

Disqualification: 49 CFR 383.51

Major Offenses – Table 1

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 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 first conviction or refusal to be tested 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 disqualified from operating a CMV for...	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table 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 or refusal to be tested in a separate incident of any combination of offenses in this Table 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
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.272 of this part	1 year	1 year	3 years	Life	Life
(5) Leaving the scene of an accident	1 year	1 year	3 years	Life	Life
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table	1 year	1 year	3 years	Life	Life
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV	1 year	Not applicable	3 years	Life	Not applicable
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide	1 year	Not applicable	3 years	Life	Not applicable
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement	Life-not eligible for 10-year reinstatement
(10) Using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11)	Life-not eligible for 10-year reinstatement	Not applicable	Life-not eligible for 10-year reinstatement	Not applicable	Life-not eligible for 10-year reinstatement

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
 - DWI (drunk/drugged)
 - 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

Disqualification: 49 CFR 383.51

Serious Violations – Table 2

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 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 incident 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...	For a third or subsequent 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 third or subsequent conviction of any combination of offenses in this Table in a separate incident 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...
(1) Speeding excessively, involving any speed of 24.1 mph (15 mph) or more above the posted speed limit	60 days	60 days	120 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	60 days	120 days	120 days
(3) Making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days
(4) Following the vehicle ahead too closely	60 days	60 days	120 days	120 days
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days
(6) Driving a CMV without obtaining a CDL. ¹	60 days	Not applicable	120 days	Not applicable
(7) Driving a CMV without a CDL in the driver's possession	60 days	Not applicable	120 days	Not applicable
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported	60 days	Not applicable	120 days	Not applicable
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving. ²	60 days	Not applicable	120 days	Not applicable
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV. ²	60 days	Not applicable	120 days	Not applicable

¹ Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

² Driving, for the purposes of this disqualification, means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location.

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 *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 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...

For a third or subsequent 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 third or subsequent conviction of any combination 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...

(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit

60 days

60 days

120 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

60 days

120 days

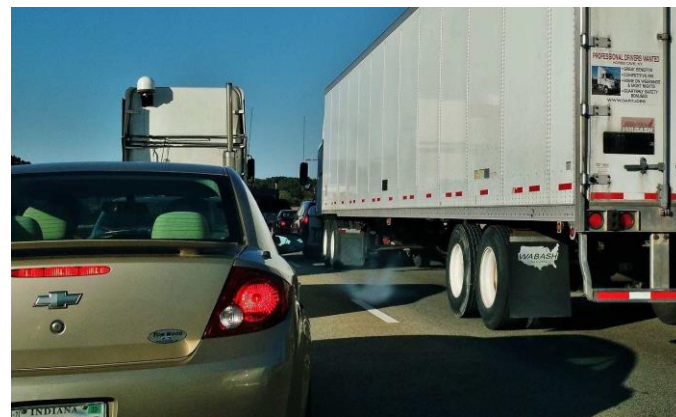
120 days

Disqualification: Serious Traffic Violations

- **May result in disqualification**
- Cumulative in nature
 - Speeding 15 mph or above
 - 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

Disqualification: Other Violations

- Railroad Crossing Offenses
- Out-of-Service Violations
 - Only in a CMV
 - Mandatory Disqualification

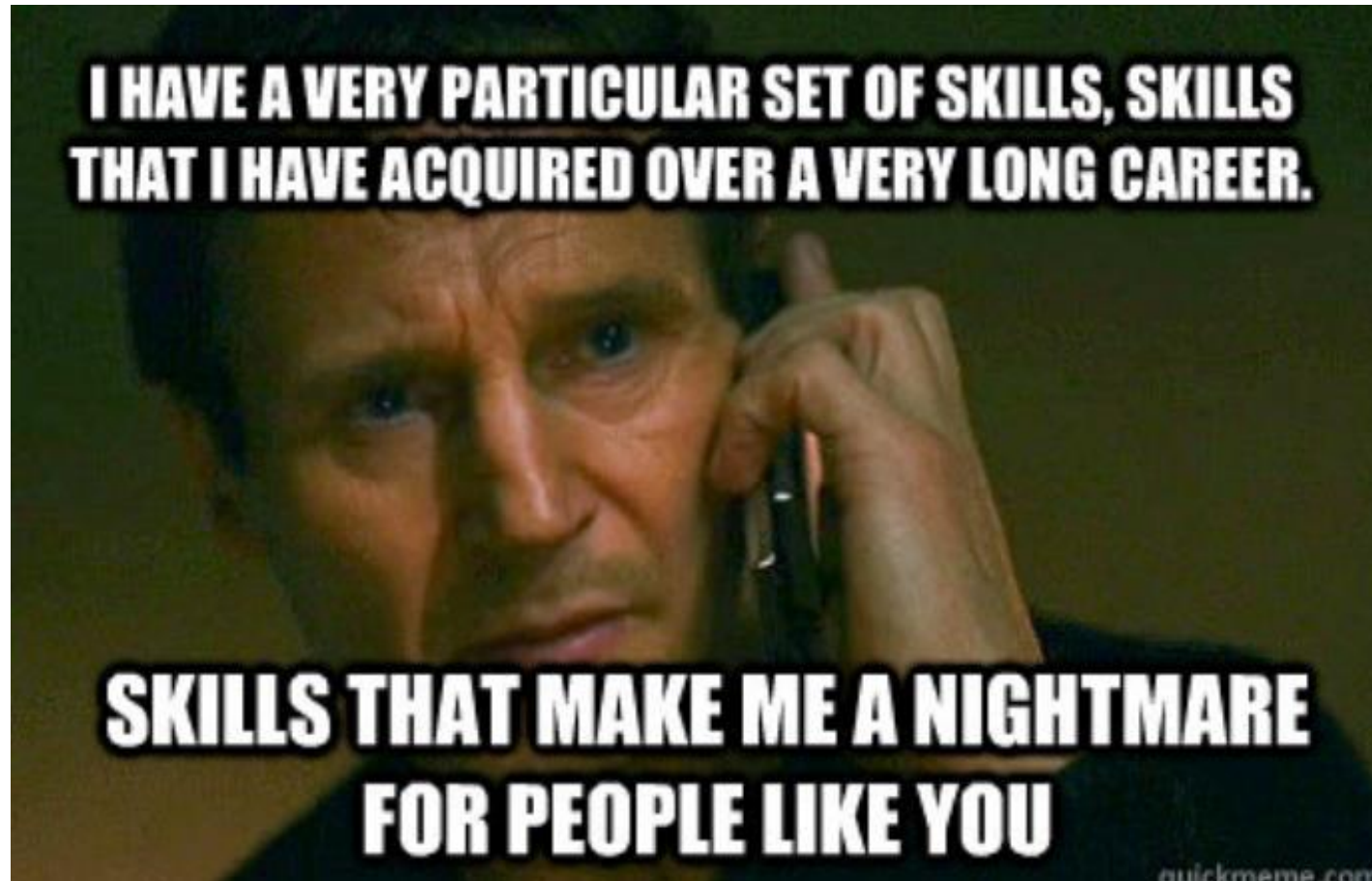


How
Society
sees
them...

How they see themselves...



CDL Holders are Held to a Higher Standard





THIS is the Nightmare!

National Traffic Law Center

Jim Camp, Staff Attorney

jcamp@ndaajustice.org

(703) 519-1650

Romana A. Lavalas, Senior Attorney

rlavalas@ndaajustice.org

(703) 519-1674

Joanne Thomka, Director

jthomka@ndaajustice.org

(703) 519-1678

National Traffic Law Center

National District Attorneys

Association

1400 Crystal Drive, Suite 330

Arlington, Virginia 22202

www.ndaa.org/ntlc_home.html

