

CDL Masking: “One Driver One License One Record”

What You Need to Know to Help Save Lives on Americas Roadways

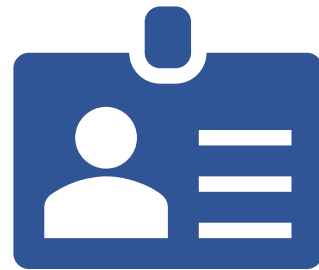
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NATIONAL TRAFFIC LAW CENTER





One Driver.



One License.

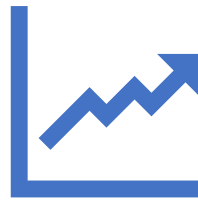


One Record.

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

How do we know which truckers are most likely to crash?



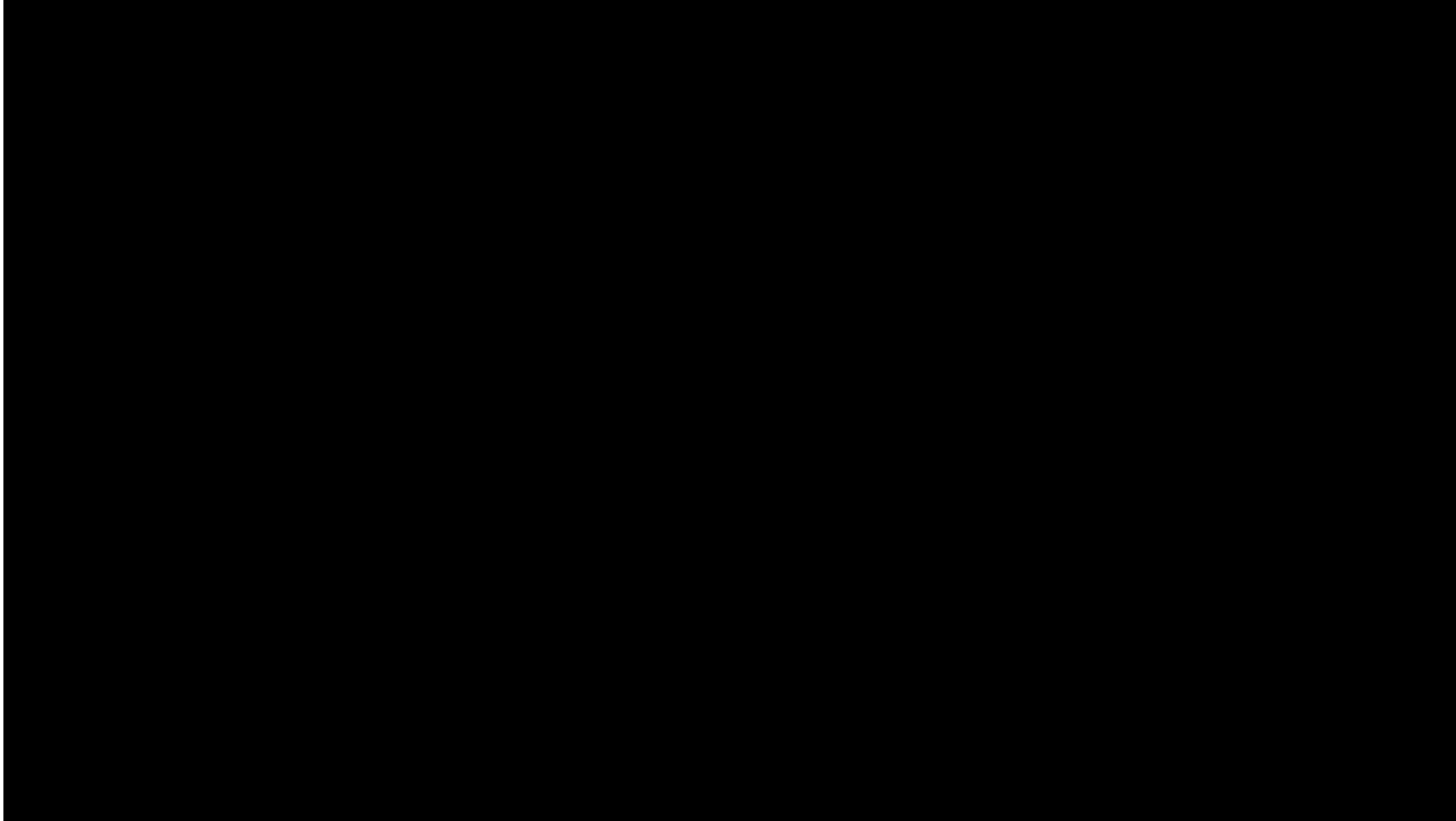


Who are the drivers that can be predicted to be involved in a crash?

- Overall, almost ten percent (9.38%) of all drivers in this analysis were convicted of an offense.

If a Driver had	The Crash Likelihood Increased
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%
Hours of Service Violation	50%
Speeding	40%

Part One: The Roadside - CMV



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point of view.

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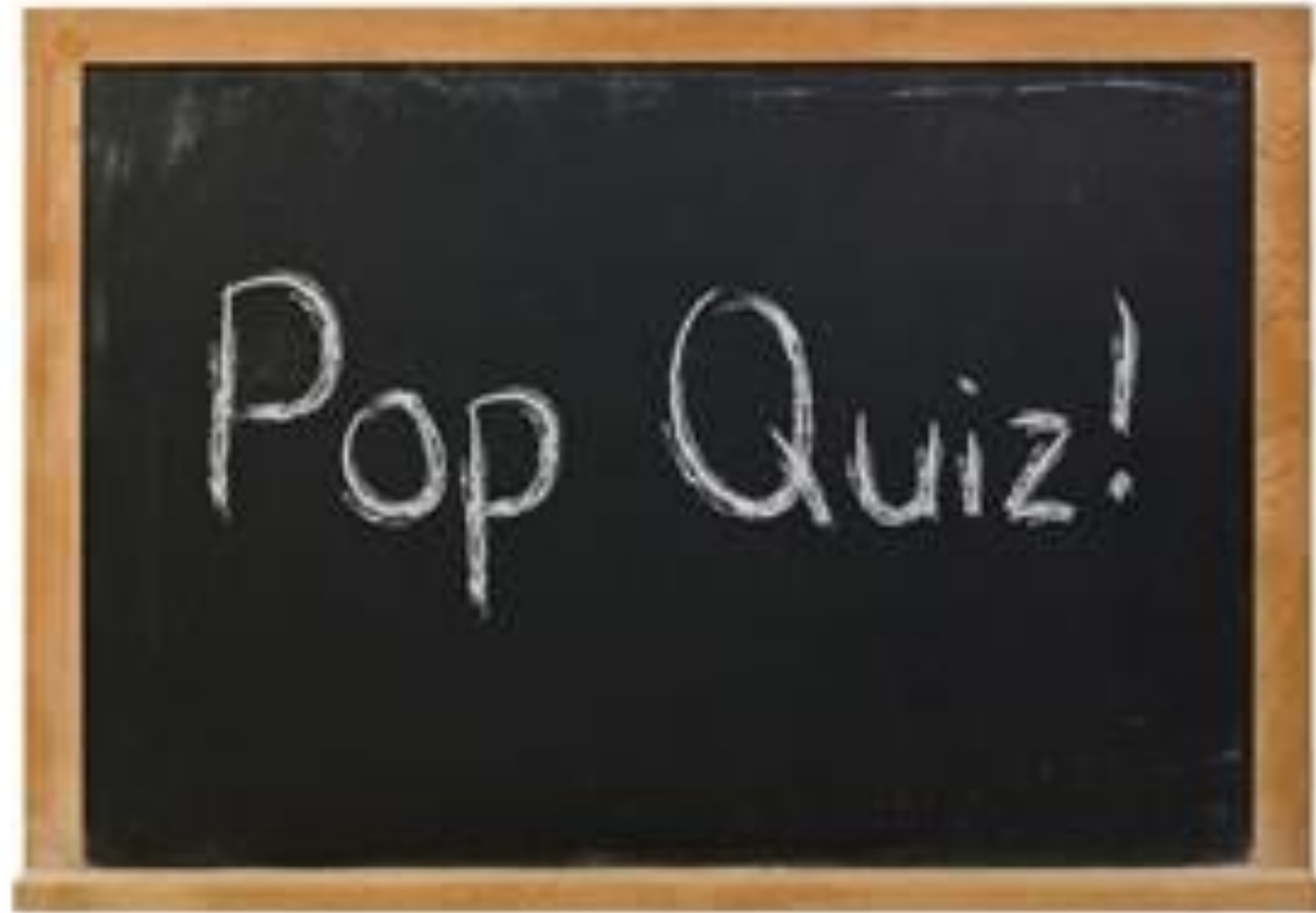
Conviction Defined

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



After arraignment, Defendant absconds. Judge signs bail forfeiture.

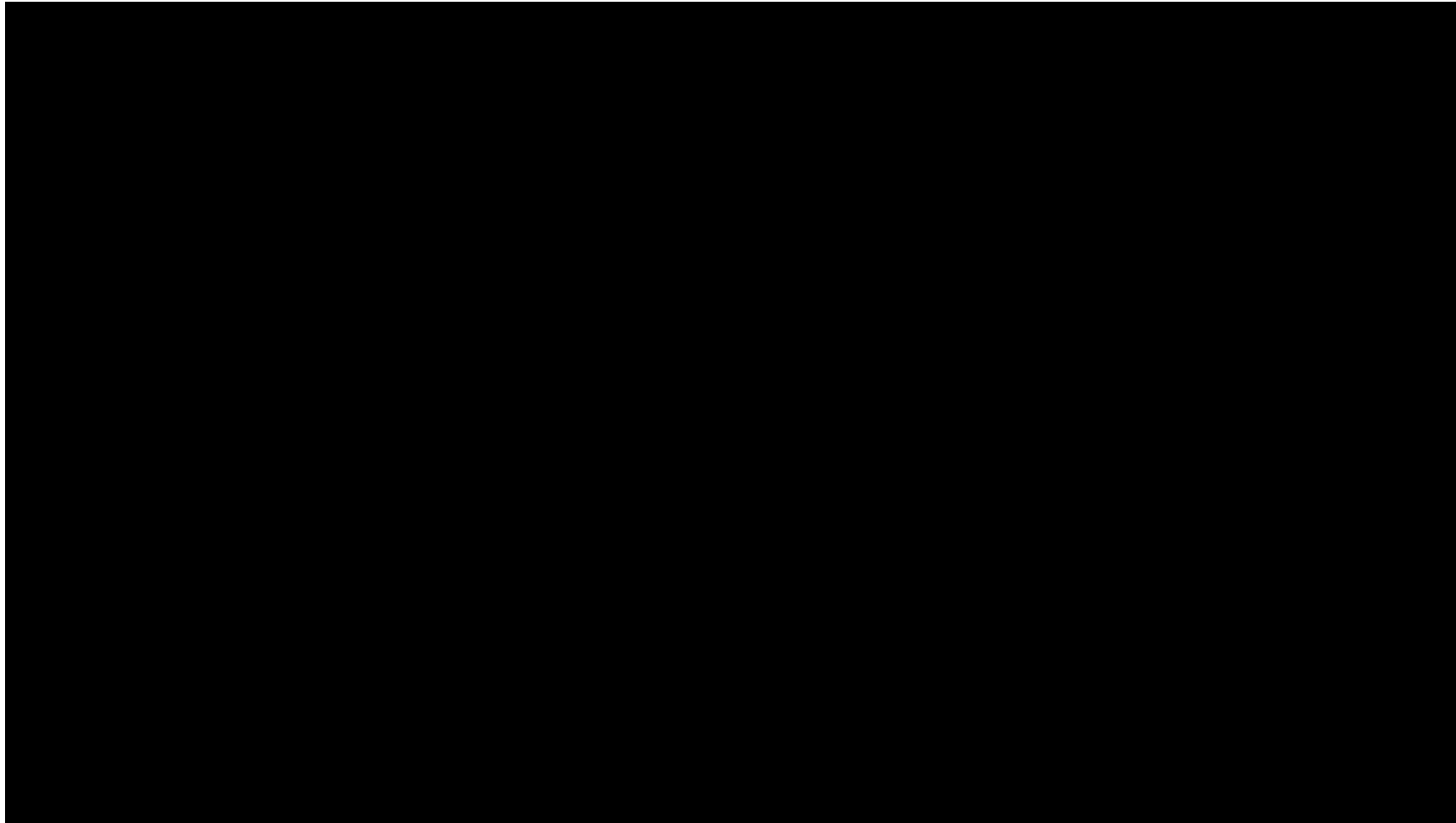
Is this a conviction?



Yes.

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

Part Two: The Roadside – CDL & Personal Vehicle



Felony Convictions w/ MVs



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.

Felony Convictions w/ MVs





(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

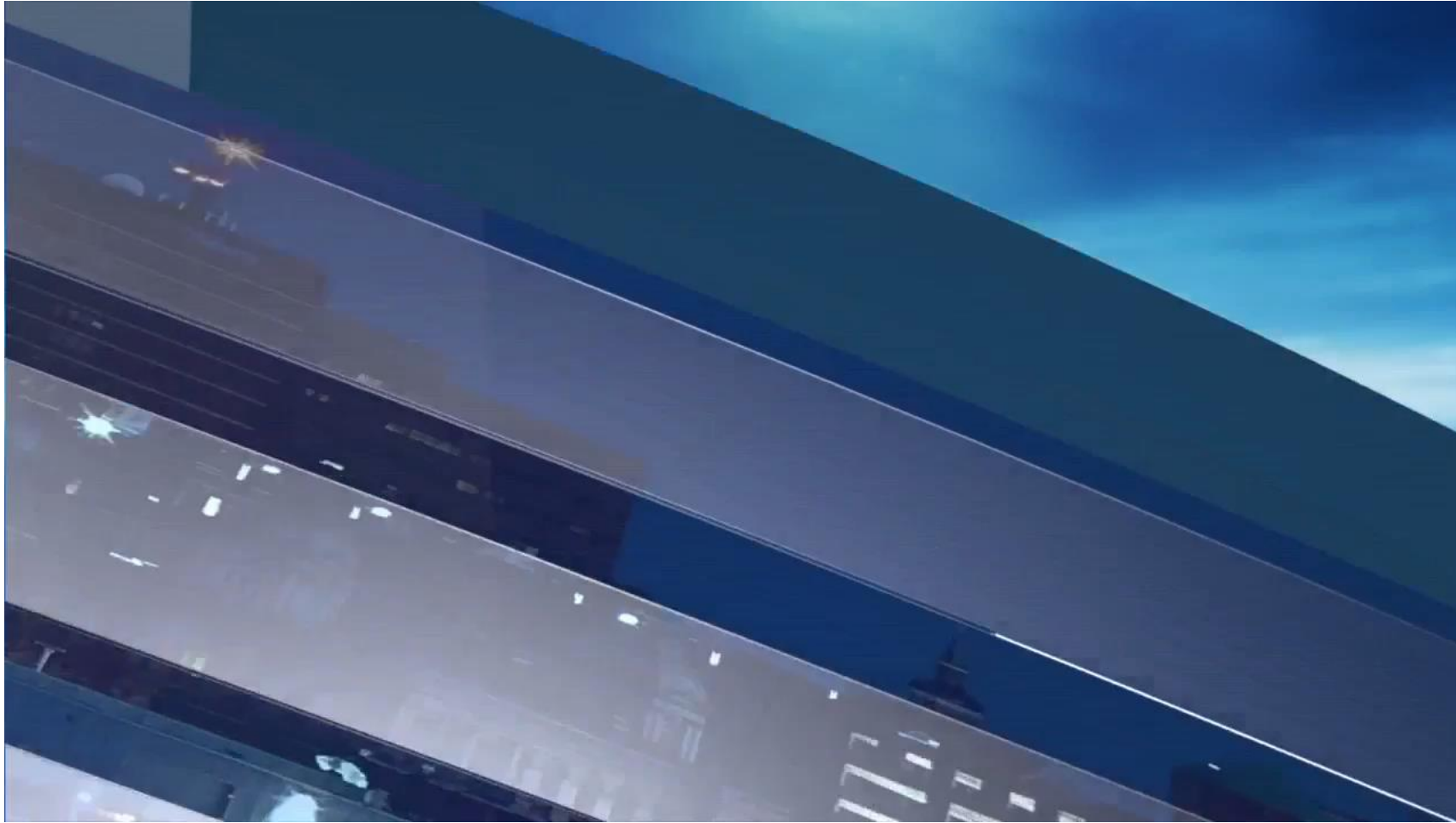
- For **ANY violation** of a State or local traffic control law (*except parking, vehicle weight or vehicle defect*)
- In **ANY vehicle**
- **From** appearing on **CDL* Holder's driving record**
- Whether or not convicted in home state or out-of-state

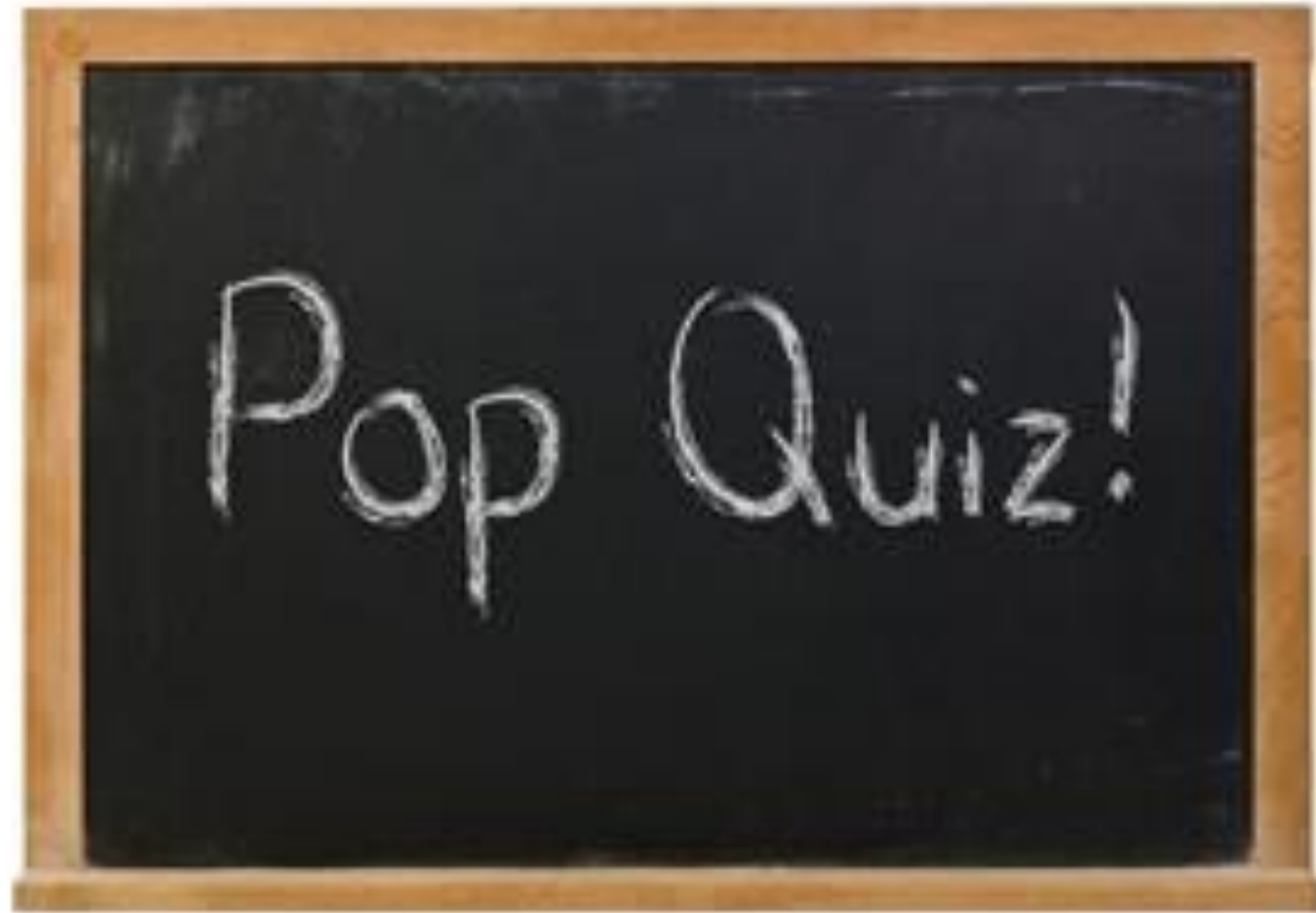
* Or CLP holder

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, Adjournment 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.



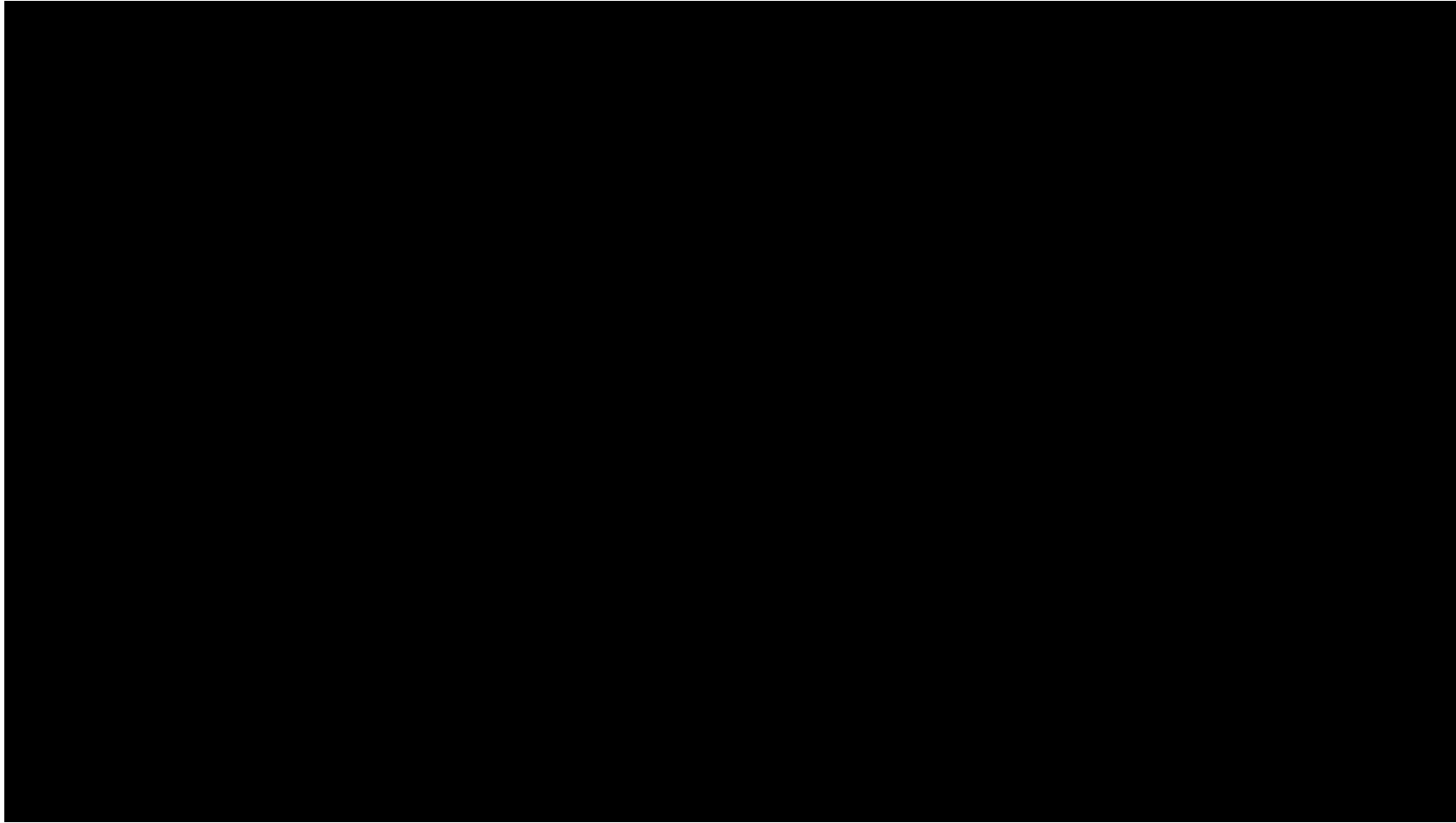
Police Officer pulls over a driver for speeding in a non-CMV vehicle. Instead of issuing a speeding ticket, the officer issues a warning because the driver has a CDL.

Not Masking

Judges and Prosecutors Maintain Authority and Discretion to:

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

Part Three: The Courtroom

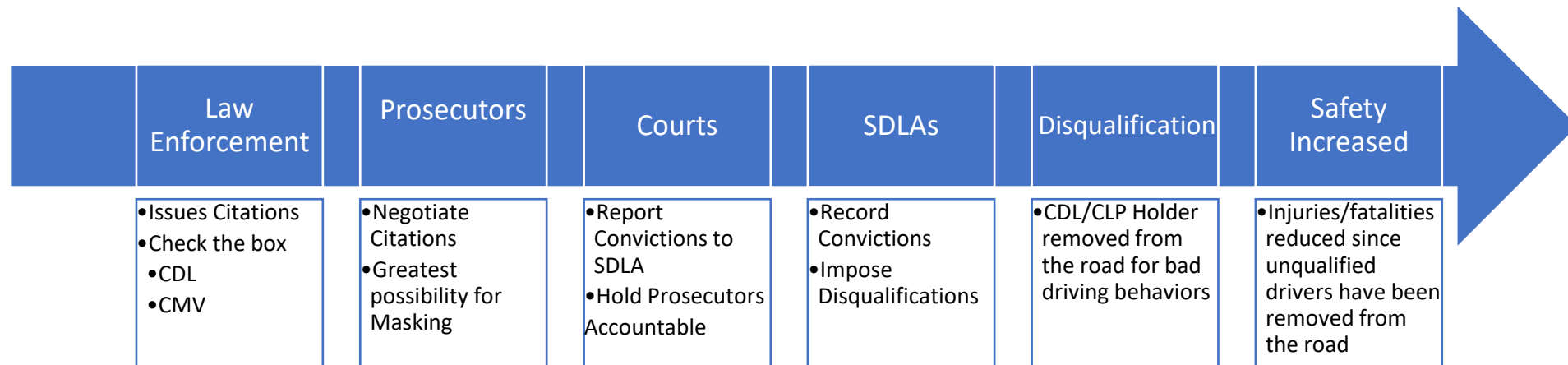


Consequences of State Non-Compliance (49 CFR § 384.401 (a) and (b) (2021)).

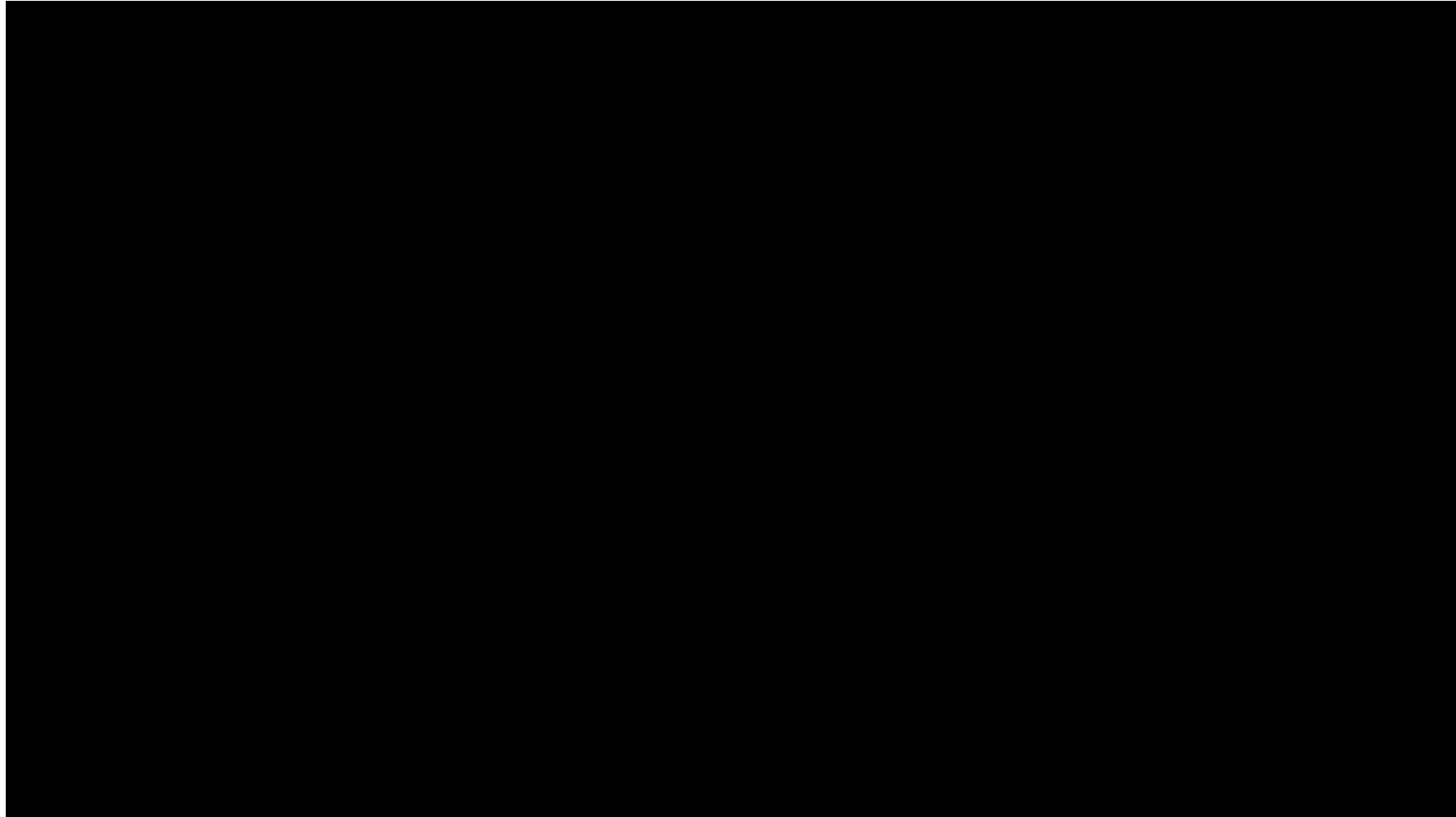
Withholding Millions in Highway Funds

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

Accurate and Timely Reporting is Key!



Part Four: The Clerk



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But I'm going to 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)

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

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





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



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 30 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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**“From Roadside
to Record” Videos**



SCAN ME

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