

Effectively Handling Commercial Drivers License Holders in New York Courts

Hon. Gary A. Graber
Town Justice, Town of Darien



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Learning Objectives

After this course you will be able to:

- Identify applicable Federal and state CDL/CMV laws;
- Determine what constitutes “masking”;
- Discover the unique definition of a “conviction” under CDL/CMV laws;

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Learning Objectives

After this course you will be able to:

- Detect the ethical implications of mishandling CDL/CMV cases; and
- Develop ethical and efficient procedures for the handling of CDL/CMV cases in your court.
- Recognize the violations applicable.

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Why Should You Care?



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Requested skills to acquire from prior students

- “How-to better-read citations, how not to mask”
- “More effective adjudication of CDL cases”
- “Understand the penalties of CDL holders”
- Correctly identifying the CDL holder and the vehicles they operate (personal vehicles vs. CMV vehicles)
- The reason Court awareness of the subject is so important

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“I really don’t handle many CDL cases”

Have you ever said this?

Do you handle a traffic court?

Why would you think you don’t handle these cases?

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How Many Times Have You Heard or Observed in Your Courts?

I will lose my job/client will lose job

They are federal rules and do not apply

CDL holder needs a break

Lack of knowledge by the other stakeholders.

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Canon 1

A judge shall Avoid impropriety and the appearance of impropriety

Rule 1.1: Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

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Rule 1.2

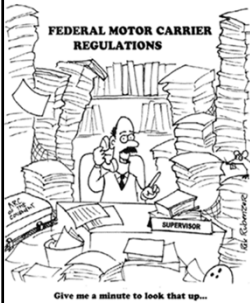
Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.



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Focus Today



PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

§383.51 Disqualification of drivers.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

§384.226 Prohibition on masking convictions.

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Goals of CMVSA of 1986

- Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one state;
- Ensure that all CMV drivers demonstrate minimum levels of knowledge and skills needed to safely operate CMVs before licensing;
- Subject CMV drivers to new uniform sanctions for certain unsafe driving practices.

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1986—Congress Adopts Commercial Motor Vehicle Safety Act

Faced with ever increasing number of fatalities from large truck crashes, Congress held hearings and made three significant findings:

- No classified driver licensing system existed in 18 states;
- Of the remaining 32 states, only 12 required a skills test;
- Widespread use of multiple CDL licenses;
- No network to track serious violations.

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Motor Carrier Safety Improvement Act of 1999

- Established the Federal Motor Carrier Safety Administration (FMCSA)
- Commercial Motor Vehicle and Driver Safety
 - (The reason we are here today)

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Federal Regulations State Laws and Regulations

While we will discuss federal regulations (49 CFR 383 and 384), it's important to know each state, including New York, has adopted all or almost all of these regulations into its state's laws or statutes.

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New York State

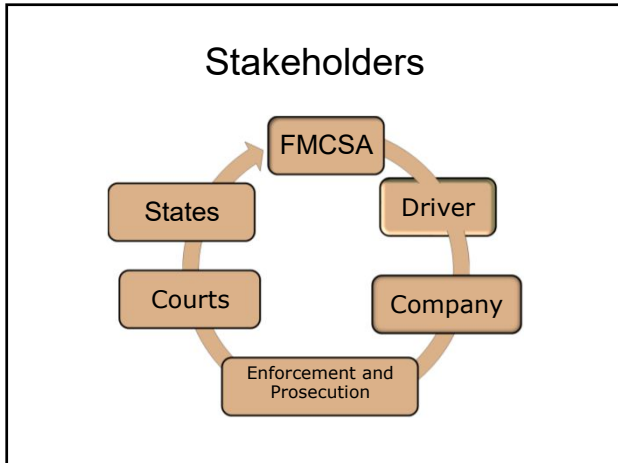
17 NYCRR Part 820

Section 820.13. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklets entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199 and Parts 200 to 299 and Parts 300 to 399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register.

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Federal Law Prohibits “Masking” 49 CFR 384.226

State must not mask, defer imposition of judgment, or allow individual to enter into diversion program that would prevent CLP/CDL holder’s conviction for violation, in any type of motor vehicle, of state or local traffic control law... from appearing on CDLIS driver record, whether driver was convicted for offense committed in a state where the driver is licensed or another state.

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The Basic Steps

CONSISTANT
ENFORCEMENT

SUBJECT MATTER
KNOWLEDGE BY PEO/DEF

PROCEDURAL / COURT
STAFF IDENTIFICATION
OF THESE CASES

TIMELY AND PROPER
CONVICTION RECORDING AT
STATE LEVEL

WILL
STOP
MASKING

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The Silo Effect

What can
we do to
bridge these
gaps?



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Stakeholders working together to reduce crashes and save lives.
Every group has a resource to ensure "Masking" is eliminated.



- National Judicial College (NJC)
- National Traffic Law Center (NDAA)
- American Association of Motor Vehicle Administrators (AAMVA)
- Commercial Vehicle Safety Alliance (CVSA)
- Federal Motor Vehicle Safety Administration (FMCSA)
- NYSMA and NYAMCC

Links to your respective stakeholder can be found at:
<https://cdlresourceguide.org/#guide>

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A Clear Pathway

- Very simple steps:
 - Understand and recognize the stakeholders involved in the process
 - Understand the definitions:
Disqualification and **Conviction**

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A Clear Pathway

- Locate the Disqualification Tables
- Recognize the importance of these few violations and the special attention needed when they are filed in your courts

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Masking

Because “masking” is prohibited to ensure all “convictions” appear on CDL history / record, one cannot comply with the masking prohibition unless the definition of “conviction” under 49 CFR 383.5 is understood.

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A Simple Equation

Conviction

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“Conviction”

49 CFR 383.5

- An unvacated adjudication of guilt
- Determination a person violated or failed to comply with law in court of original jurisdiction or authorized administrative tribunal
- An unvacated forfeiture of bail or collateral deposited to secure person’s appearance in court

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“Conviction”

49 CFR 383.5

- A plea of guilty or *nolo contendere* accepted by the court
- Payment of a fine or court costs
- Violation of condition of release without bail, regardless of whether penalty is rebated, suspended or probated

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Conviction

NYS VTL ARTICLE 1 (S 109c)

Conviction. Any conviction as defined in subdivision thirteen of section 1.20 of the criminal procedure law; provided, however, where a conviction or administrative finding in this state or another state results in a mandatory sanction against a commercial driver's license, as set forth in sections five hundred ten, five hundred ten-a, eleven hundred ninety-two and eleven hundred ninety-four of this chapter, conviction shall also mean an 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 probated.

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Reminder about the Purpose and Procedures Related to Bail Forfeitures “M”1 (2015)

- Extremely important !!!
- Results in conviction as defined in regulations.
- Notify DMV within 15 days of forfeiture.

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A Simple Equation

Conviction
+
Disqualification

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Disqualifying Offenses

1. Major offenses
2. "Serious traffic offenses"
3. Railroad grade crossing violations
4. Violations of out-of-service orders

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Major Disqualifying Offenses

49 CFR 383.51
(NYS VTL 500&510a)

CMV or non-CMV :

- Driving under influence of alcohol or controlled substances;
- Refusal to submit to alcohol testing.
- Leaving the scene of an accident
- Felony involving use of a vehicle;
- Felony involving the manufacture, distribution, or dispensing of controlled substances.

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Major Disqualifying Offenses

49 CFR 383.51
(NYS VTL 500&510a)

CMV only:

- Alcohol concentration of 0.04 or higher
- Causing a fatality through the negligent operation of a CMV
- Driving when CDL is suspended or revoked.

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49 CFR 383.51
(NYS VTL 510a)

- Driving without obtaining a CDL;
- Driving without a CDL in driver's possession;
- Driving without proper class of CDL and/or endorsements
- Texting while driving (effective 10/27/10)
- Restriction / prohibition on use of hand held mobile phone while driving (effective 1/3/12)

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Citation Familiarization

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Polling Question

In your opinion what is the document contains the most important information for you to review when any CMV/CDL case is filed in your courts?

1. Driving Record
2. Disqualification Tables
3. Citation/Traffic Ticket
4. Crash Statistics in your state

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Truck driver trapped for an hour in crash that closed I-81 North



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Key Identifiers in the Citation

<p>Local Police Code</p> <p>Vehicle Make and Model</p> <p>Owner's License Class</p> <p>Vehicle Make</p> <p>Vehicle Model</p> <p>Vehicle Year</p> <p>Vehicle Color</p> <p>Vehicle Weight</p> <p>Vehicle Type</p> <p>Vehicle License Number</p> <p>Vehicle Registration Number</p> <p>Vehicle Title Number</p> <p>Vehicle Insurance Number</p> <p>Vehicle VIN</p> <p>Vehicle DOT Number</p> <p>Vehicle HAZMAT</p> <p>Vehicle Commercial Vehicle</p>		<p>License Class</p> <p>Vehicle Make</p> <p>Statute Number</p> <p>Description</p> <p>DOT Number</p> <p>HAZMAT</p> <p>Commercial Vehicle</p>
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Last Name (Last/First/MI)		First Name		M.I.	
[REDACTED]		ERICK		T	
Number and Street		Apt. No.		Photo Lic. Shown	
[REDACTED]		[REDACTED]		XX	
Client ID Number		Sex		Date Expires	
101959036		M		06/10/2020	
Lic. State	Date of Birth	Veh. Type	Year	Make	Color
SC	06/10/1985	6	2004	FRHT	RD
Plate Number	Reg. State	Registration Expires			
P762608	SC	12/20/2019			
THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS					
Time	Date of Offense	IN VIOLATION OF			
03:26PM	08/08/2019	VTL			
Violation Section	Traffic Infraction Misd Felony				
1129_0A	XX				
Description of Violation					
FOLLOWING TOO CLOSELY					
US DOT#		3178990			
Common Veh. Bus		Hack/Mar			
XX		O			

WRONG LICENSE CLASS

VIOLATION FOLLOWING TOO CLOSE

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Last Name (Last/First/MI)		First Name		M.I.	
[REDACTED]		[REDACTED]		[REDACTED]	
Number and Street		Apt. No.		Photo Lic. Shown	
[REDACTED]		[REDACTED]		XX	
Client ID Number		Sex		Date Expires	
101959036		M		06/10/2020	
Lic. State	Date of Birth	Veh. Type	Year	Make	Color
SC	06/10/1985	6	2004	FRHT	RD
Plate Number	Reg. State	Registration Expires			
P762608	SC	12/20/2019			
THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS					
Time	Date of Offense	IN VIOLATION OF			
03:26PM	08/08/2019	VTL			
Violation Section	Traffic Infraction Misd Felony				
1123_0B	XX				
Description of Violation					
LEFT PAVEMENT TO PASS ON RIGHT					
US DOT#		3178990			
Common Veh. Bus		Hack/Mar			
XX		O			
County		ONONDAGA			
Hwy No		3461			
Hwy Type		1			

WRONG LICENSE CLASS

Lane Change Violation

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Last Name (Last/First/MI)		First Name		M.I.	
[REDACTED]		[REDACTED]		[REDACTED]	
Number and Street		Apt. No.		Photo Lic. Shown	
[REDACTED]		[REDACTED]		XX	
Zip Code		Owner is		Lic. Class	
29829045		Oper. XX		A	
Date Expires		06/10/2020			
Lic. State	Date of Birth	Veh. Type	Year	Make	Color
SC	06/10/1985	6	2004	FRHT	RD
Plate Number	Reg. State	Registration Expires			
P762608	SC	12/20/2019			
THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS					
Time	Date of Offense	IN VIOLATION OF			
03:26PM	08/08/2019	TL			
Violation Section	Traffic Infraction Misd Felony				
140_2CII	XX				
Description of Violation					
392.2 NYS VTL 1212 RECKLESS DRIVING					
"Out of Service"					
US DOT#		3178990			
Common Veh. Bus		Hack/Mar			
XX		O			
Hwy No		81			
Hwy Type		1			
Street Name		7831 NB INTERSTATE 81			

Class changed to Class A

Transportation Law
Not
Vehicle and Traffic
Law

An observant court clerk
found this.

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Why Should You Care?



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A FEW FACTS FROM CVSA SAFE DRIVER WEEK 2018

Top five warnings/citations issued to passenger vehicle drivers:

State/Local Moving Violations – 46.1%

Speeding – 32.2%

Failure to Obey Traffic Control Device – 1.6%

Inattentive/Careless Driving – 3.5%

Failure to Use Seatbelts – 6.6%

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A FEW FACTS FROM *CVSA SAFE DRIVER WEEK 2018

Top five warnings/citations issued to CMV drivers:

State/Local Violations – 56.1%

Speeding – 17.8%

Failure to Use Seat Belts – 10.0%

Failure to Obey Traffic Control Device – 7%

Using a Handheld Phone – 2.4%
*Commercial Vehicle Safety Alliance

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Do Traffic Violations Matter?

- Table at right is from: Boris, C., & Murray, D. (2018). *Predicting Truck Crash Involvement: 2018 Update*. The American Transportation Research Institute. Arlington, Virginia. Page 15.
- Research shows certain traffic violation are associated with an increased likelihood of being involved in a crash
- Those with Reckless Driving violations and Failure to Yield Right of Way violations were **more than twice as likely to be involved in a crash** compared to those without these violations
- Drivers with certain violation types in their records are more likely than those without those violations to be involved in crashes later
- Masking of offenses prevents drivers from being disqualified

Table 4: Summary of Crash Likelihood for All Data Analyzed

If a driver had:	The crash likelihood increased:	Rep
A Reckless Driving violation	114%	100
A Failure to Yield Right of Way violation	101%	100
A Failure to Keep in Proper Lane conviction	83%	100
A Failure to Use / Improper Signal conviction	82%	100
A Past Crash	72%	100
An Improper Lane / Location conviction	72%	100
An Improper Pass conviction	70%	100
A Reckless / Careless / Inattentive / Negligent Driving conviction	69%	100
An Improper or Erratic Lane Changes conviction	67%	100
An Improper Lane Change conviction	63%	100
An Hour of Service violation	50%	100
An Improper Turn conviction	48%	100
A Following Too Close conviction	46%	100
A Speeding violation	45%	100
A Failure of No Log Book violation	45%	100
A Disqualified Driver conviction	44%	100
Any conviction	43%	100
A Speeding More Than 15 Miles over Speed Limit conviction	40%	100
A Speeding 15-19 Miles over Speed Limit conviction	36%	100
Any Moving conviction	35%	100
A Seat Belt violation	33%	100
A Failure to Obey Traffic Control Device conviction	30%	100
Any OVI conviction	29%	100
A Failure to Obey Traffic Sign conviction	25%	100
A Driving Too Fast for Conditions conviction	25%	100
A Size and Weight violation	20%	100
A Failure to Obey Traffic Signal / Light conviction	20%	100
A Reckless Driving conviction	20%	100
An Improper Turn conviction	19%	100
A Failure to Yield Right of Way conviction	19%	100
An Improper Passing conviction	19%	100
A Following Too Close conviction	19%	100
A Medical Certificate violation	19%	100
A Failure to Obey Yield Sign conviction	19%	100
A Failure to Obey Stopping Light / Flasher conviction	19%	100

100% = no increase in crash likelihood
Rep = 100% of drivers

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OPERATION SAFE DRIVER WEEK (CVSA) 2018-2020 DISQUALIFYING OFFENSES (FMCSR 383.51)

RANK BY PERCENTAGES	2018		2019		2020	
	CMV	NON CMV	CMV	NON CMV	CMV	NON CMV
1	STATE/LOCAL VIOLATIONS	STATE/LOCAL VIOLATIONS	SPEEDING	SPEEDING	SPEEDING	SPEEDING
2	SPEEDING	SPEEDING	SEATBELT	SEATBELT	SEATBELT	SEATBELT
3	SEATBELT	SEATBELT	FAIL/OBEY TRAFFIC CONTROL DEVICE	FAIL/OBEY TRAFFIC CONTROL DEVICE	FAIL/OBEY TRAFFIC CONTROL DEVICE	ALCOHOL/DRUGS
4	FAIL/OBEY TRAFFIC CONTROL DEVICE	CARELESS/RECKLESS DRIVING	CELL PHONE	CARELESS/RECKLESS DRIVING	CELL PHONE	FAIL/OBEY TRAFFIC CONTROL DEVICE
5	CELL PHONES	FAIL/OBEY TRAFFIC CONTROL DEVICE	IMPROPER LANE CHANGE	ALCOHOL/DRUGS	IMPROPER LANE CHANGE	IMPROPER LANE CHANGE

- ✓ YELLOW - (FMCSR 383.51 TABLE 2) SERIOUS TRAFFIC VIOLATIONS, NOTE: STATE AND LOCAL VIOLATIONS NEED TO BE RE RELATED TO MOVING
- ✓ GREEN - (FMCSR 383.51 TABLE 1)
- ✓ SPECIAL NOTE: FAIL TO OBEY A TRAFFIC CONTROL DEVICE COULD BE A REDUCTION FROM SOMETHING MORE SERIOUS

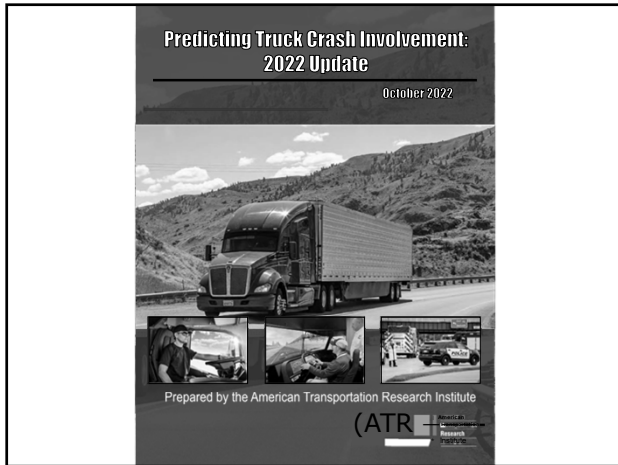
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COMPARING THE LAST THREE STUDIES

RANK	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%)

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ATRI
American Transportation Research Institute

Table 2: Top 20 Most Frequently Occurring Violations

Violation Description	Frequency	Percent
Lighting	290,899	16.3%
All Other Vehicle Defects	249,700	14.0%
Brakes - All Others	237,853	13.3%
All Other Hours-Of-Service (HOS)*	116,902	6.5%
All Other Driver Violations*	112,850	6.3%
Tires	106,194	5.9%
Brakes - Out of Adjustment	91,302	5.1%
Size And Weight*	84,190	4.7%
Speeding*	51,703	2.9%
Emergency Equipment	50,317	2.8%
Windshield	47,528	2.7%
Periodic Inspection	45,134	2.5%
No Log Book - Log Not Current*	41,750	2.3%
Load Securement	39,136	2.2%
Wheels - Studs - Clamps	27,645	1.5%
10/15 Hours*	21,933	1.2%
Suspension	21,385	1.2%
False Log Book*	20,645	1.2%
Failure To Obey Traffic Control Device*	17,763	1.0%
Seat Belt*	15,317	0.9%
Total	1,690,146	94.7%

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FIGURE: CRASH ANALYSIS

Table 6 contains a summary of the Crash Predictor chi-square analysis. The list is **rank ordered** by the percentage increase in future crash probability, based on specific violations **conditions** and prior crashes.

Table 6: Crash Predictor Analysis

Driver Behavior	Future Crash Likelihood Increase	Sig
A Failure to Yield Right-of-Way violation	141%	***
A Failure to Use / Improper Signal conviction	116%	***
A Prior Crash	113%	***
A Reckless Driving violation	104%	***
A Failure to Obey Traffic Sign conviction	85%	***
A Failure to Keep in Proper Lane conviction	78%	***
An Improper or Erratic Lane Change conviction	77%	***
A Reckless / Careless / Reckless / Negligent Driving conviction	62%	***
An Improper Lane / Location conviction	61%	***
A Failure to Obey Traffic Signal / Light conviction	59%	***
A Disqualified Driver conviction	53%	***
A Failure to Use Log Book violation	49%	***
A Speeding 1 to 15 Miles Over Speed Limit conviction	48%	***
An HOS violation	47%	***
A Speeding violation	47%	***
Any conviction	46%	***
An Improper Turn conviction	45%	***
A Following Too Close violation	44%	***
Any Moving violation	43%	***
A Speeding More Than 15 Miles Over Speed Limit conviction	40%	***
An Improper Lane Change conviction	39%	***
A Failure to Obey Traffic Control Device conviction	34%	***
A Day and Night violation	31%	***
Any CDL violation	29%	***
A Driving Too Fast for Conditions conviction	27%	***
A Failure to Obey Warning Light / Flasher conviction*	24%	***
An Improper Pass conviction	ns	
A Following Too Close conviction	ns	
An Improper Passing violation	ns	
An Improper Turn violation	ns	
A Failure to Yield Right-of-Way conviction	ns	
A Failure to Yield Right-of-Way conviction	ns	

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Predicting Truck Crash Involvement: 2022 Update

GAG1

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**RECKLESS
DRIVING (VTL 1212)**

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Slide 56

GAG1 Gary A. Graber, 3/26/2021

Putting it all together

Reckless Driving

New York (VTL 1212)

- ✓ Appears as a Serious Traffic Violation Notation
- ✓ Appears as a Serious Traffic Violation in FMCSR 383.51 Table 2
- ✓ Appears on American Transportation Research Report
 - ✓ Likelihood of crash from violation? 114%

Do you recognize the importance of paying attention to these violations?

Is not paying attention to reductions of Serious Traffic Violations likely a Masking concern?

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10-Day Posting Requirement



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REPORTING CONVICTIONS INVOLVING OUT-OF-STATE CDL HOLDERS/CMV OPERATORS "M" 5 (2013)

- Certificate of Conviction filed with DMV within 96 hours.
- Violation of VTL, local law, rule or regulation or ordinance.
- CDL issued by another state.
- Holds any license by another state and commits the offense in a commercial motor vehicle.
- Even if fine not collected (FNC)
- DMV must report to home state within 10 days of conviction.

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The Court's Role



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The Court's Role



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The Court's Role



- Understand that these cases are not merely traffic cases
- The consequences of an incident are much more severe
- Are we the last resort to ensuring public safety?

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The Court's Role



- Increased education will increase judicial awareness
- Remind yourself of the potential consequences when minimizing the outcome of these cases
- Timely adjudication and reporting of these cases no matter what the disposition may be

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The Court's Role



- Who was affected?
- Occupants of the vehicles and all acquaintances
- First responders, fire, police, medical, environmental spill?
- Co-workers or customers?
- Hospital and nursing home supplies were delayed in this incident

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“Too busy” (is not an option)

A comment often heard both by the prosecutors and judges alike. The two examples above show how easy it is to miss information that may just avoid a tragedy down the road.

We are the gatekeepers!

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Finally

Is there anything you may do differently now that we've offered you some tools to repair some of the breakdowns?

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Canon 2

A judge shall perform the duties of judicial office impartially, competently, and diligently

Rule 2.2: Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

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Canon 2 Rule 2.2 Impartiality and Fairness

- A Judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

Comment:

- B. Administrative Responsibilities
(2) Judges should require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to judges.

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Questions?

Thanks for taking the time
today to do your part in
improving safety on our
highways

cdlcourtassist.org

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Something to think about...

"Two roads diverged in a woods, and I—
I took the one less traveled by,
And that has made all the difference".



"Robert Frost"

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