

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.
- > Locate the violations applicable.



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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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]
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. 	



1986—Congress Adopts Commercial Motor Vehicle Satefy 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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Straight from the Federal Register

This practice allows unsafe drivers to continue to pose a risk to other motorists by allowing their continued operation on the nation's highways



Straight from the Federal Register

This provision also requires that records of such conviction information be made available to all authorized parties and government entities. The FMCSA urges State Executive Branch agencies to work with the State Judicial Branch to eliminate the practice of masking.

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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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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.



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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Getting It Right

- Consistent Enforcement (Statutory awareness)
 Complete Information on Tickets (Help your Courts)

- Knowledge of the Application of Federal Law/State Laws
 Ensure pleas are consistent with our application of the law
 Dispositions lacking evidence or other legal reason gets put on the record.

- Review the Citations/Tickets for CDL Operators and Vehicles
 Understand Definitions of Terms (Conviction, Disqualification, and Masking)
 Ensure Court Clerks have knowledge, they are a great asset to assist Judges.

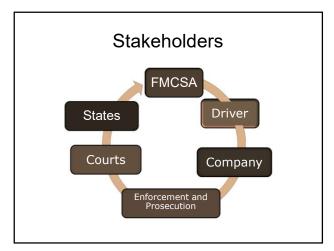
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The Silo Effect

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



Working Together in New York

- New York State Magistrates Association
- New York State Association of Magistrates Court Clerks
- > New York State Sheriffs Association
- > NYSP CVEU
- > NYS DOT

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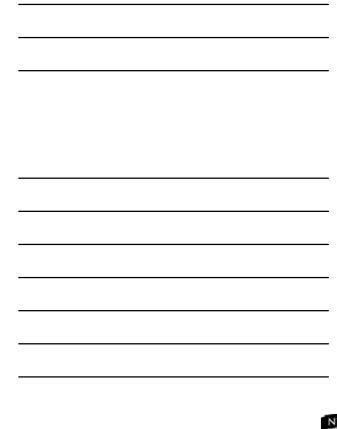
Federal Law Prohibits "Masking" 49 CFR 384.226

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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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.





NYS DMV "M" 9 (2023)



"M" 9 (2023) Albany, New York October 12, 2023

TO: All Magistrates

SUBJECT: CLP/CDL Anti-Masking and Mandatory Reporting Requirements

The Department of Motor Vehicles is reminding all Magistrates of the following federal and state requirements pertaining to holders of commercial learner permits (CLP) and commercial driver licenses (CDL).

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NYS DMV "M" 11 (2024)



"M" 11 (2024) Albany, New York October 23, 2024

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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



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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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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A Simple Equation

Conviction

+

Disqualification

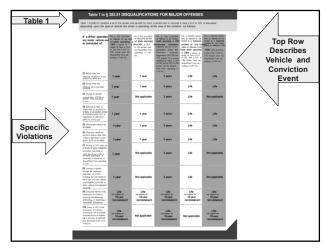




Disqualifying Offenses

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

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49 CFR § 383.51(c) Warrants CDL Disqualification Upon Conviction for 2 or More "Serious Violations"



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Serious Traffic Violations

49 CFR 383.51 (NYS VTL 510a)

CMV or non-CMV:

- Excessive speed 15 mph or more over the speed limit;
- > Reckless Driving;
- > Traffic violation in connection with fatal accident (crash);
- > Improper / erratic lane change;
- > Following too closely

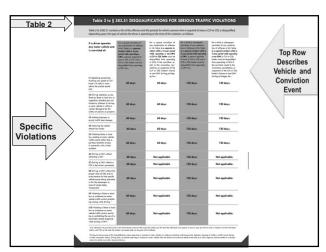
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Serious Traffic Violations

49 CFR 383.51 (NYS VTL 510a)

CMV only:

- > 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)





A Simple Equation

Conviction

+

Disqualification

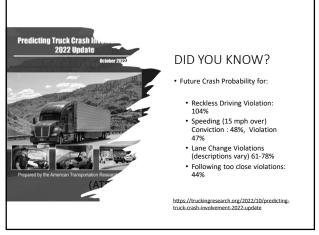
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Citation Familiarization

Reductions of Masking Incidents

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Al	l Convi	ctions are	e from c	s Driver one New York County (Mo ce Courts)	ultiple
/iolation	Speed	Plea	Speed	Disposition Date	
Speeding	47/30	Parking		Monday, May 18, 2015	
Гum		Parking		Monday, July 27, 2015	
Cell Phone		Parking		Wednesday, August 31, 2016	
Speeding	62/45	Parking		Thursday, June 1, 2017	
Speeding	50/30	Parking		Monday, February 12, 2018	
Speeding	80/55	Speeding	62/55	Wednesday, April 17, 2019	
Speeding	70/55	Jaywalking		Sunday, February 7, 2021	
Speeding	69/55	Parking ??		Saturday, March 27, 2021	
Speeding	45/30	Parking		Tuesday, August 3, 2021	
Speeding	48/30	Jaywalking		Friday, July 23, 2021	
Speeding	67/55	Parking ??		Monday, April 18, 2022	
Cell Phone		Parking		Tuesday, July 5, 2022	
Speeding	46/30	Pending	Stop	Saturday, June 3, 2023	38





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
- Involved in a crash

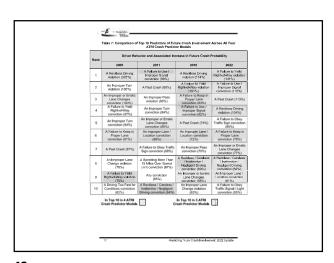
 Those with Reckless Driving violations and Failure to Yield Right of Way violations were more than twice as likely to be involved in a crash compared to those without these violations
- Privers with certain violation types in their records are more likely than those without those violations to be involved in crashes later
- Masking of offenses prevents drivers from being disqualified

If a driver had:	The crash likelihood increased:	Sig
A Recidess 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 Centrol Device violation	30%	***
Any OOS violation	29%	***
A Failure to Obey Traffic Sign conviction	25%	**
A Driving Too Past for Conditions conviction	25%	
A Size and Weight violation	20%	***
A Failure to Obey Traffic Signal / Light conviction	20%	
A Recidess Driving conviction		OB
An Improper Turn violation		ne
A Failure to Yield Right of Way conviction	-	08
An Improper Passing violation		Λs
A Following Too Close violation		///8
A Medical Certificate violation		Λs
A Failure to Obey Yield Sign conviction		OB
A Failure to Obey Warning Light / Flasher conviction		OS

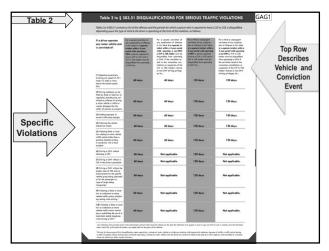
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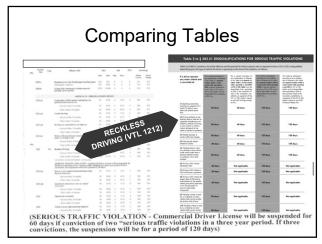
Violation Description	Frequency	Percent
Lighting	290,899	16.39
All Other Vehicle Defects	249,700	14.09
Brakes - All Others	237,853	13,39
All Other Hours-Of-Service (HOS)*	116,902	6.59
All Other Driver Violations*	112,850	6.3%
Tires	106,194	5.9%
Brakes - Out of Adjustment	91,302	5.1%
Size And Weight*	84,190	4.79
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	1.29
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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Putting it all together

Reckless Driving

New York (VTL 1212)

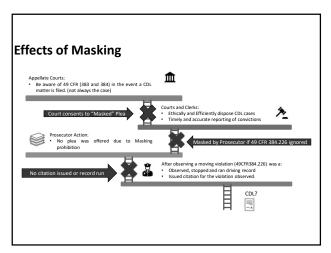
- ✓ Appears as a Serious Traffic Violation Notation
- Appears as a Serious Traffic Violation in FMCSR 383.51 Table 2
- ✓ Appears on American Transportation Research Report
 ✓ Likelihood of crash from violation?

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?



GAG1 Gary A. Graber, 3/26/2021



So, Our case has been disposed of:							
1) A conviction to the original charge was entered and reported.							
2) A dismissal (after appeal was upheld) and reported							
Masking occurred ! In addition to the reduction or dismiss offered by the Prosecutor and accepted by the Court.							
a) Yes							
b) No							
c) Maybe MAYBE !!!!							



Data Quality

- Often referred to DataQs, is an FMCSA system that allows users to request and track a review of Federal and State data issued by FMCSA believed to be incomplete or incorrect.
- Requests for Data Review (RDRs) for all States and FMCSA Division Offices

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The system enables all users—motor carriers, drivers and their representatives, as well as FMCSA and its State partners—to improve the accuracy of FMCSA's data-driven safety systems that help prevent crashes, injuries, and fatalities related to commercial motor vehicles. Accurate data leads to safer roads.

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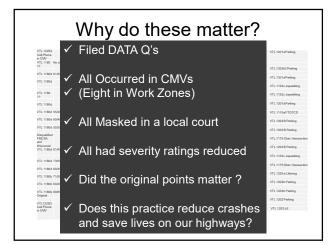
VEHICLE QUALIFICATION FOR DATA Q INQUIRY

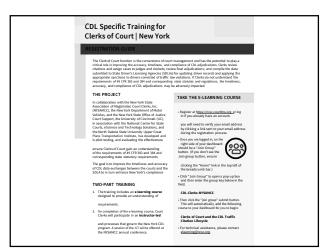
At least one of the following must apply:

- The qualifying vehicle involved in the crash is a CMV, which includes:
 - A truck having a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways; or
 - A motor vehicle designed to transport nine or more people, including the driver; or
 - ANY vehicle displaying a HM placard, regardless of weight;
 ANY vehicle transporting placarded amounts of HM; or ANY vehicle required to be placarded.

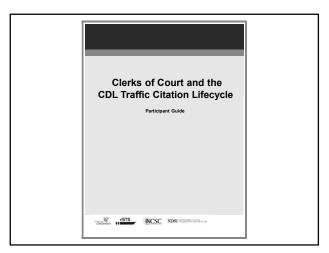
NJC	
$\Delta \Delta$	

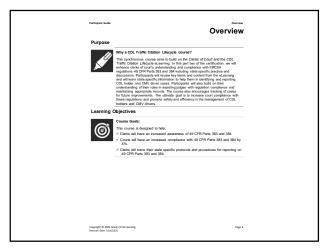
THE REASON SEVE	erity Weights Are Dismissed or Reduced
Result of Adjudicated Citation Associated w Violation Uploaded to MCMIS	ith a Safety Measurement System (SMS)
Convicted of original charge	Violation not removed
Dismissed with fine or punitive court costs	Violation not removed
Dismissed without fine or punitive court costs	Record appended to reflect sms rating of 0
Not Guilty	Record appended to reflect sms rating of 0
Convicted of a lesser charge	Append inspection to
	indicate violation "Resulted in conviction of a different charge." Change sevently weight to 1.
Con very see how a "Maske	d " case can also allow a driver with a











Contact:	:
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(Cell)-7164742777	cdlcourtassist.org
(E-mail)- ggraber@judges.org	
cdlcourtassist.org	医多类的
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Q		Д	5	tı	\cap	n	5	`/
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Thanks for taking the time today. Correct disposition of these cases will reduce crashes and save lives.

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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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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"

