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Objectives

- Define masking
- Describe how masking occurs
- Explain the impacts of masking
- Law enforcement roles to prevent masking

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Masking Defined – 49 CFR

§ 384.226 Prohibition on masking convictions.

The State must not **MASK**, defer imposition of judgment, or allow an individual to enter into a **diversion** program that would prevent a CLP or CDL holder'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 CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

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Masking Defined – Kansas Statutes Annotated

8-2,150. Commercial driver's licenses; diversion agreements or masking of imposition of judgement not allowed.

(a) A driver or a holder of a commercial driver's license **may not** enter into a **DIVERSION** agreement in lieu of further criminal proceedings that would prevent such person's conviction for any violation, **in any type of motor vehicle**, of a state or local traffic control law, except a parking violation, from appearing on the person's record, whether the person was convicted for an offense committed in the state where the person is licensed or another state.

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Masking Defined – Kansas Statutes Annotated

8-2,150. Commercial driver's licenses; diversion agreements or masking of imposition of judgement not allowed.

(b) For purposes of subsection (a), a person shall be considered a **holder of a commercial driver's license** if the person was a holder of a commercial driver's license at the time the person was arrested or was issued a citation and **shall remain a holder** of a commercial driver's license even **if the person surrenders** the commercial driver's license after the arrest or citation.

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Masking Defined – Kansas Statutes Annotated

8-2,150. Commercial driver's licenses; diversion agreements or masking of imposition of judgement not allowed.

(c) (1) A **PROSECUTING ATTORNEY** as defined in K.S.A. 22-2202, and amendments thereto, **shall not mask or defer** imposition of judgment or allow an individual to enter into a **diversion** program that would prevent a commercial learner's permit or commercial driver's license holder's conviction from appearing on the CDLIS driver record of any violation of a state or local traffic control law that occurred **in any type of motor vehicle**. The provisions of this subsection shall apply regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any another state.

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Masking Defined – Kansas Statutes Annotated

8-2,150. Commercial driver's licenses; diversion agreements or masking of imposition of judgement not allowed.

(2) The provisions of this subsection **SHALL NOT APPLY** to parking, vehicle weight or vehicle defect violations.

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How Masking Occurs

- A CDL holder receives a moving violation ticket
- Livelihood on the line
- Prosecutor has sympathy or doesn't have time to prosecute
- Charges reduced to parking or equipment

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How Masking Occurs

VIOLATIONS						
Section	Type	Unit	OOS	Citation #	Verify	Crash
392.2-SLLS4	F	D	N	NA10878801	N	N

Violations Discovered
 State/Local Laws - Speeding 15 or more miles per hour over the speed limit.: 72 mph in posted 55 mph zone. Speed checked by certified moving radar.

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At this time, the defendant appears by and through his attorney, _____ and the State appears by _____. The case is set for a plea. The State moves to amend the complaint by interlineation to one count of a violation of K.S.A. 8-1571 ("Stopping, standing, or parking in prohibited places"), an infraction.

THEREUPON, the Court is informed by the defendant's counsel that the defendant has authorized him to enter plea of no contest on his behalf to the following charge:
K.S.A. 8-1571 (Stopping, standing, or parking in prohibited places) (an infraction).

THEREUPON the court accepts the defendant's pleas of no contest, finding that it is knowingly and voluntarily made after consultation with counsel. Pursuant to the statement of the County Attorney, the Court finds there is a factual basis to support the pleas.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the defendant, _____ is beyond a reasonable doubt guilty of the crime of Stopping, standing, or parking in prohibited places, in violation of K.S.A. 8-1571, a traffic infraction.

THEREUPON, the parties agree to proceed immediately to sentencing. The respective parties present their recommendations and/or evidence to the Court.

THEREUPON, the Court inquires whether there is any legal reason why sentence should not now be imposed. The parties advise there is none. After hearing the same, the Court imposes sentence as follows:

<u>Offense</u>	<u>Sentence</u>
Stopping, standing, or parking in prohibited places.	A fine of \$174.00

The Court specifies that court costs of \$108.00 are further assessed to the defendant.

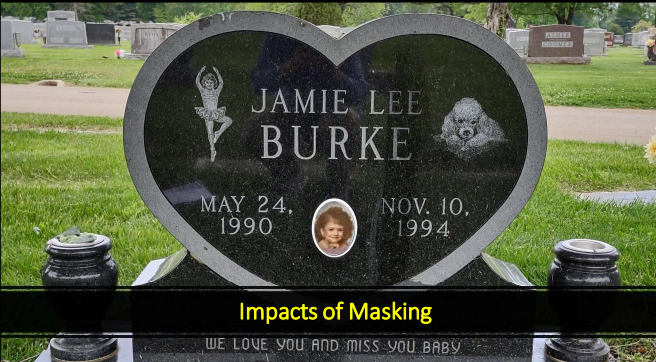
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How Masking Occurs

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the defendant, _____ is beyond a reasonable doubt guilty of the crime of Stopping, standing, or parking in prohibited places, in violation of K.S.A. 8-1571, a traffic infraction.

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Impacts of Masking

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Impacts of Masking

- November 1994, four-year old **Jamie Lee Burke** was riding in the back of a car driven by her babysitter, when it was struck from behind by a dump truck while stopped at a red light, and burst into flames
- Investigation revealed the truck driver, Wallace Jones, never touched the brakes and had a **BAC above the legal limit two hours later**

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Impacts of Masking

- May 1994, Jones was stopped at a weigh station in another state and had a BAC exceeding the legal limit for CMV operators
- July 1994, **convicted of DUI/DWI**
- Conviction reported to the licensing agency in his home state, but the **CMV box was not checked**
- Home state entered the conviction as an **OPEN CONTAINER** charge instead of DUI
- Jones **should have received a one-year suspension**, which may have prevented him from driving four months later when he killed Jamie

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Law Enforcement Role to Prevent Masking

- Ensure the "CDL" box is marked for all CDL holders in **ANY** type of vehicle

DL State: _____ DL No: _____ ☐ CDL



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 Law Enforcement Role to Prevent Masking

➤ Problem?

DRIVER LICENSE OR OTHER ID	NUMBER	STATE	CLASS / TYPE	CDL
		KS	B	☐



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 Law Enforcement Role to Prevent Masking

DRIVER LICENSE OR OTHER ID	NUMBER	STATE	CLASS / TYPE	CDL
		KS	AM	☐



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 Law Enforcement Role to Prevent Masking

➤ Ensure the “**CMV**” box is marked for all commercial motor vehicles (*not just CDL required vehicles*)

☐ Accident	☒ Commercial Veh.	☐ Haz. Mat.	☐ Con. Zone	☐ School Zone
Speeding	☐ Pace	☐ Radar	☐ Stopwatch	☐ Lidar
☐ Aircraft	☐ Other			
Alleged Speed	Legal Speed	ID No.		

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Summary

- Any **CDL** or **CLP** holder
- Any type of vehicle
- Shall not mask, divert, defer any charge from appearing on CDL
 - *Except:* Parking, Weight, Vehicle defects

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