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Albany, New York

February 2, 2016

TO: All Enforcement Agencies and Magistrates

SUBJECT: Prohibition on Diversion Programs for Commercial Driver Permit/License Holders and Commercial Motor Vehicle Operators

The purpose of the memorandum is to remind all courts and District Attorneys’ Offices about the federal law that prohibits courts from “masking convictions, deferring imposition of judgment, or allowing an individual to enter a diversion program” if such individual holds a commercial learner’s permit/license (CLP/CDL) or operates a commercial motor vehicle (CMV) at the time of the traffic offense. (49 CFR 384.226 is the federal regulation.) It is improper, for example, to dismiss a ticket for a violation of the Vehicle and Traffic Law, or a local law, rule or ordinance related to traffic (other than parking, standing or stopping) because the defendant completes a driver safety diversion program if the offense was committed by the holder of a CLP or a CDL or the offense was committed in a CMV.

In addition, effective May 30, 2011, section 170.55 of the Criminal Procedure Law was amended to provide that a court may not issue an adjournment in contemplation of dismissal if the offense was for a violation of the VTL related to the operation of a motor vehicle or a violation of a local law, rule or ordinance related to traffic (other than parking, standing or stopping) if the offense was committed by the holder of a CLP/CDL or was committed in a CMV.

Failure to comply with federal and state law jeopardizes federal highway funding for New York State. Your cooperation in this matter is appreciated. Thank you.

Theresa L. Egan  
Executive Deputy Commissioner