

Effectively Handling Commercial Drivers License Holders in New York Courts

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



1

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;

2

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.

3



“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?

4

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.

5

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.

6



**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.

7

**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)

8

8

**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

9

9



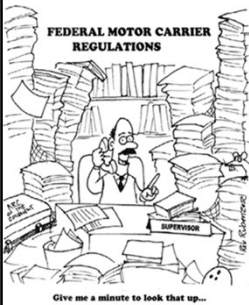
Straight from the Federal Register

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.

10

10

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.

11

11

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.

12



New York State

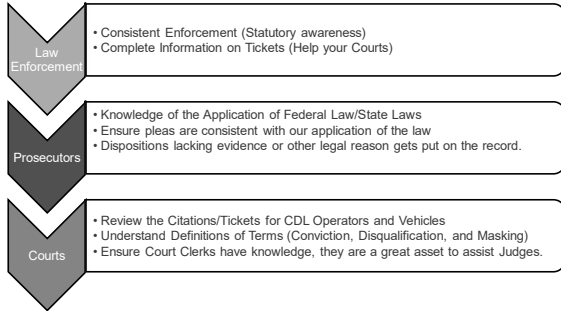
17 NYCRR Part 820

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.

13

Getting It Right



14

14

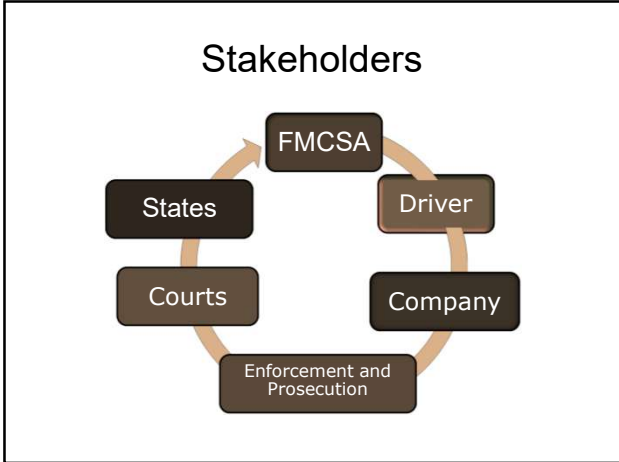


The Silo Effect

What can we do to bridge these gaps?

15





16



17

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>

18



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

19

19

Roadside (Part Two)



20

20

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.

21



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.

22

NYS DMV “M” 9



“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).

23

A Clear Pathway

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

24



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

25

A Simple Equation

Conviction

26

“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

27



“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

28

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.

29

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.

30



A Simple Equation

$$\text{Conviction} + \text{Disqualification}$$

31

Disqualifying Offenses

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

32

Table 1 →

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 DLP or CDL is disqualified depending upon the type of vehicle the driver is operating at the time of the violation, all offenses.

If a driver operates an out-of-service vehicle	Class A	Class B	Class C	Class D	Class E
(1) Being under the influence of alcohol or drugs	1 year	1 year	2 years	Life	Life
(2) Driving on the wrong side of the road	1 year	1 year	2 years	Life	Life
(3) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(4) Driving on a highway with a prohibited number of axles	1 year	1 year	2 years	Life	Life
(5) Driving on a highway with a prohibited number of axles	1 year	1 year	2 years	Life	Life
(6) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(7) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(8) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(9) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(10) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(11) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(12) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(13) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(14) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(15) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(16) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(17) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(18) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(19) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(20) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(21) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(22) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(23) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(24) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(25) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(26) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(27) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(28) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(29) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(30) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(31) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(32) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(33) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(34) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(35) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(36) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(37) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(38) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(39) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(40) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(41) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(42) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(43) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(44) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(45) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(46) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(47) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(48) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(49) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable
(50) Driving on a highway with a prohibited number of axles	1 year	Not applicable	2 years	Life	Not applicable

← **Specific Violations**

Top Row Describes Vehicle and Conviction Event

33



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



34

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

35

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)

36



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 violations 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:
A Reckless Driving conviction	114%
A Failure to Yield Right of Way violation	101%
A Failure to Stop at a Stop Sign conviction	83%
A Failure to Obey a Stop Sign conviction	82%
A Seat Belt conviction	73%
An Improper Lane - Location conviction	72%
An Improper Lane Change conviction	71%
A Reckless - Careless / Inattentive / Negligent Driving conviction	69%
An Improper or Erratic Lane Change conviction	67%
An Improper Lane Change violation	63%
An Hourly Service violation	50%
An Improper Turn conviction	49%
A Following Too Close conviction	45%
A Speeding violation	45%
A Failure of the Log Book violation	44%
A Disqualified Driver violation	44%
Any conviction	43%
A Speeding More Than 10 Miles over Speed Limit conviction	40%
A Speeding 10-15 Miles over Speed Limit conviction	36%
Any Moving conviction	35%
A Seat Belt violation	33%
A Failure to Obey Traffic Control Device violation	30%
Any OOS violation	29%
A Failure to Obey Traffic Sign conviction	25%
A Driving Too Fast for Conditions conviction	25%
A Size and Weight violation	20%
A Failure to Obey Traffic Signal / Light conviction	20%
A Reckless Driving conviction	20%
An Improper Turn violation	19%
A Failure to Yield Right of Way conviction	18%
An Improper Passing violation	18%
A Following Too Close violation	18%
A Medical Certificate violation	18%
A Failure to Obey Yield Sign conviction	18%
A Failure to Obey Obeying Light / Flasher conviction	18%

46

Predicting Truck Crash Involvement: 2022 Update

October 2022



Prepared by the American Transportation Research Institute



47



Table 3: 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%

48



Slide 51

GAG1 Gary A. Graber, 3/26/2021

Comparing Tables

Section	Code	Section Name	Class	Points	Days	Notes
1000	1000.0	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.2	Operating a motor vehicle without a valid license	Class B	5	90	
1000.3	1000.3.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.3.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.3.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.4	1000.4.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.4.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.4.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.5	1000.5.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.5.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.5.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.6	1000.6.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.6.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.6.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.7	1000.7.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.7.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.7.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.8	1000.8.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.8.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.8.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.9	1000.9.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.9.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.9.3	Operating a motor vehicle without a valid license	Class B	5	90	
1000.10	1000.10.1	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.10.2	Operating a motor vehicle without a valid license	Class B	5	90	
	1000.10.3	Operating a motor vehicle without a valid license	Class B	5	90	

RECKLESS DRIVING (VTL 1212)

(SERIOUS TRAFFIC VIOLATION - Commercial Driver License will be suspended for 60 days if conviction of two "serious traffic violations in a three year period. If three convictions, the suspension will be for a period of 120 days)

52

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?

53

Clerks



54

54



Contact:

Hon. Gary A Graber (ret.)

(Cell)-7164742777

(E-mail)- ggraber@judges.org

cdlcourtassist.org

cdlcourtassist.org



55

Questions?

Thanks for taking the time today. Correct disposition of these cases will reduce crashes and save lives.

56

Finally

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

57



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”

58

