

MAMA Municipal Law Program & Annual Meeting

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The Dangers of Masking Commercial Driver License (CDL) Violations

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Masking is prohibited by 49 CFR Sec. 384.226

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.

What is Masking?

A disposition that prevents the violation or the conviction from being reported on the CDL/CLP Holder's driving record.

Black's Law Dictionary: The practice or an instance of a defendant's agreeing by plea bargain to plead guilty to a less serious offense than the one originally charged, *as by pleading guilty to parking on the curb when one has been charged with speeding in a school zone.*

CDL/CLP

Professional drivers.

Highly trained and skilled.

Pass multiple tests, written and on road.

Medical every two years.

Additional endorsements, hazmat, bus, etc.

CMV

Weigh up to 80,000 pounds to cross state line.

20 to 30 times weight of personal vehicle.

Two football fields to stop from 65 mph.

If stay in Michigan, depending on axles, up to 169,000 pounds.

Survey done by John Wallace of Federal Motor Carrier Safety Administration (FMCSA).

Tracked 500 Citations.

Only 30% made to driver's record.

Finding against the State.

Monetary Penalties

1st year 4% = \$38 million.

2nd year 8% = \$76 million.

3rd year decertify.

Secondary.

Masking is a public safety issue.

10,000 Alcohol related crashes.

5,000 Crashes involving a CMV.

Only 10 to 20 percent is CDL holder fatality.

State of Michigan action plan:

State required to come up with action plan.

Michigan applied for and received a grant from federal government.

Part of action plan to hire attorney to educate prosecutors, law enforcement and judiciary.

Hired attorney with more than 30 years experience prosecuting for multiple cities.

Outreach Program:

Collaborative with FMCSA.

In-person meetings – high impact (non-threatening, here to educate, be a resource).

Webinars – good but less effective.

Met with 82 of 83 county prosecutor's offices.

Article for Michigan Assoc. of Chiefs of Police.

Met all 7 commanders from CVED districts.

Webinar for Judiciary.

Met trucking companies.

Professional drivers. Hold to a higher standard.

History of CMV industry:

1984 – 30% of fatal crashes involved a CMV.

1986 – Congress enacted Commercial Motor Vehicle Safety Act.

Minimum standards.

Created CDLIS.

Instituted one driver, one license, one record.

More CMV history:

1999 Congress enacted Motor Carrier Safety Improvement Act.

Established Federal Motor Carrier Safety Administration (FMCSA)

Adopted the anti-masking statute.

2017 – 14% of fatal crashes involve a CMV.

When do masking rules apply and to whom?

When:

Masking rules apply whenever they are on the road.

Masking rules apply when operating a personal vehicle, a non-CMV.

Whom:

Masking applies to a CDL holder.

Masking applies to a CLP holder.

If no CDL/CLP, it is not considered masking.

Go over handouts:

1st is predictors of future crash involvement.

Tables found at 49 CFR Sec. 383.51

Table I – Major violations.

Table II – Serious violations.

Table III – Railroad crossing.

Table IV – Out of Service orders.

Emphasize in meetings:

Not about the past, but the future.

Not threatening.

Educational – danger, public safety, monetary, higher standard, etc.

Make sure if violations listed in any of the four tables are not reduced.

If moving violation, but not listed, do not reduce to non-abstractable, leave a mark.

If there is a legal or factual problem with the case, it is not masking if reduced, amended or dismissed.

Key Take Aways:

CMVs are dangerous if they are operated in an unsafe manner.

CDL/CLP are professional drivers and need to be held to a higher standard.

Most of the rules apply whenever they are on the road, whether operating a CMV or a non-CMV, a personal vehicle.

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If you would like me to visit your office or your police department, or your local court, please contact me to set up a meeting.