



QUICK UPDATE

CDL MASKING

Spring 2024

Commercial Drivers Licenses & Masking



Back in November...



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Masking Generally



“Masking” a CDL conviction means that a conviction for a CDL license holder was downgraded to a less serious offense or deferred or plea bargained.



If a CDL holder pays the fine without appearing in court, that is the SAME as pleading guilty and will be reported to the State within 5 days under TN law.



Masking prohibitions only apply to moving violations, not parking violations.



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Masking Definition - 49 C.F.R. 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.

Let's talk about "Conviction."



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Conviction – Definition – “Spot the difference”

Federal Definition

- “Conviction” means 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;
- 49 C.F.R. 383.5

State Definition

- “Conviction” means 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;
- TCA 55-50-102(16)



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Can you spot the difference?



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What is CDLIS?



Commercial Driver's License Information System



Nationwide computer system that enables state driver license agencies to ensure each driver only has one record.



This prevents a driver from having multiple state records that may not talk to each other.



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CDL drivers have only one license



CDL holder only has one license.



The CDL part is an endorsement for Class A, B, C, depending on weight, or hazardous materials.



Regular drivers are Class D.



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What about personal vehicles?



Question: If a driver has a CDL, does it matter if he is driving a personal car and not a big truck?



Answer:



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What about personal vehicles?



Question: If a driver has a CDL, does it matter if he is driving a personal car and not a big truck?



Answer: No. The consequences are the same regardless of the vehicle being driven.



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Back to the Masking Definition – Stuff you can't do

Mask – conceal, dismiss with costs, dismiss without factual basis

Defer imposition of judgment – Ex: Accepts plea of no contest, but judge postpones judgment, and later dismisses the charge.



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Back to the Masking Definition – Stuff you can't do

Mask – conceal, dismiss with costs, dismiss without factual basis

Defer imposition of judgment – Ex: Accepts plea of no contest, but judge postpones judgment, and later dismisses the charge.

Enter into a diversion program – Ex: traffic school and dismiss.

Prevent a CDL holder's conviction – If this offense and the facts of the case would support a conviction, judge should convict.



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Federal exceptions that aren't masking

The federal and state prohibitions on masking do not apply to the following violations:

1. Parking violations; (like improper parking on interstate ramps)
2. Vehicle weight violations;
3. Vehicle defect violations.

See 49 C.F.R. 384.226

Judges can dismiss or reduce these violations and that is legal.



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Here's the tricky part...it can vary by state

What constitutes masking depends on your state specific law.

What may be masking in TN is not masking in other states



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Traffic School is masking in TN



Traffic school is governed by TCA 55-10-301



Statute says a judge can offer traffic school “in addition to, or in lieu of, any other penalty imposed”



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Traffic School is masking in TN

Because of the magic words, “*in lieu of any portion of other penalty imposed*,” attending traffic school would otherwise dismiss or conceal a guilty verdict or constitute a diversion.

Because this would result in no report of conviction to CDLIS, this constitutes masking



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Also, because the statute clearly says so:

TCA 55-10-301(c) and (d) say as follows:

(c) Subsection (b) (*the traffic school option*) shall not apply to any person who holds a Class A, B, or C license and is charged with any violation, except a parking violation, in any type of motor vehicle.

(d) Subsection (b) (*the traffic school option*) shall not apply to any person who holds any class of driver license and who is charged with any violation, except a parking violation, while operating a commercial motor vehicle.



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Lastly, a case says no traffic school



Metro. Gov't of Nashville & Davidson Cnty. v. Stark, 2008 WL 276005, (Tenn. Ct. App. Jan. 31, 2008)



Court of Appeals case that reversed the trial court's order allowing the CDL driver to attend traffic school.



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Dismissal with costs is also Masking

Because the penalty is reduced (no conviction) but not an outright dismissal based on the facts or law, this constitutes masking.

Also, dismissing a case with a donation to the Drug Fund or some other charitable group is also masking.



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Reducing the charge is also Masking

Charged with Reckless Driving (Class B misdemeanor)

Judge reduces to Speeding (Class C misdemeanor)

Because the original charge was more severe than the final conviction, this is masking.



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But reducing the speed is ok...

If charged with Speeding (Class C misdemeanor) with 20 mph over

Judge convicts for Speeding (still Class C misdemeanor) but reduces the speed to 10 mph over

This is not masking because the original charge and the final conviction is the same.



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Dismissing a case entirely

Judges can dismiss a case entirely and that is ok.

But the dismissal should be based on the facts, legal issues, testimony, and/or witnesses.

Don't dismiss based on sympathy.



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Plea bargaining

Judge's unilateral action

- Judge should not do the plea bargaining and reduce a charge from the bench.
- Allowing a driver to enter a new, lesser plea is considered masking.
 - Ex: Charged with speeding, but judge amends charge to a parking ticket and accepts the plea

Prosecutor and Defense Counsel

- If prosecutor and defense counsel plea bargain outside of court, and present a compromise based on facts and law...
- The judge can accept this proposed plea bargain and it not be masking.
- Assumes there is a factual basis for the plea bargain.



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Prosecutor and Defense counsel

If the proposed plea bargain is a completely separate charge not supported by facts, and that's presented to the judge, it's still masking, even if the prosecutor and defense counsel agreed.

- Example:
 - Charge – Failure to obey traffic device
 - Prosecutor amends charge to defective muffler and muffler ticket is filed with the court.
 - Court accepts plea to muffler ticket and fine is paid.
 - This is masking because no legal/factual basis to do so, and ethically questionable.



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Department of Safety's CDL Citation website



TN Department of Safety CDL citations



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TN.gov

<https://www.tn.gov/safety/driver-services/cdlcitation>

Commercial Driver License Citations

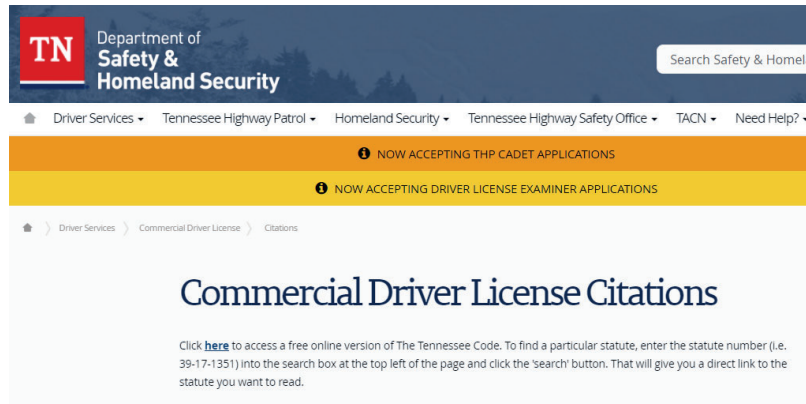
The **Tennessee Department of Safety** (TDOS) needs ... These new minimum requirements must be included on all traffic **citations** whether they are Non-CDL or CDL.



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Department of Safety's CDL Citation website

<https://www.tn.gov/safety/driver-services/commercial-driver-license/cdlcitation.html>



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Department of Safety's CDL Citation website

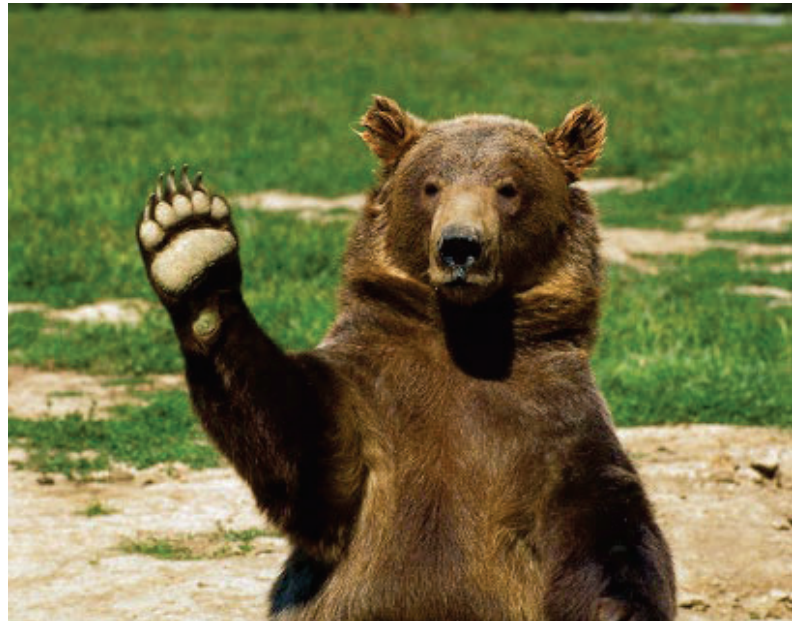
What does "masking" a CDL conviction mean?

- Masking a CDL conviction means that a conviction for a CDL license holder was downgraded to a less serious offense or deferred or plea bargained.
- If a CDL license holder pays the citation fine without appearing in court, that is the SAME as pleading guilty. This should be reported as a conviction within 10 days.
- Federal prohibition against masking CDL convictions is applied only to moving violations, not parking violations.
- Per Tennessee Code Annotated, the dismissal with costs for a registration violation would not be prohibited under TN law.
- Federal and state law prohibits masking of CDL or CMV convictions by sending convicted persons to traffic school or dismissing with cost. However, judges MAY downgrade the offense, find the defendant not guilty, or plea bargain the charge.



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Questions?



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