

# INFORMATION BULLETIN



October 13, 2023

## VIOLATION MASKING

The purpose of this Information Bulletin (IB) is to provide details regarding the masking of serious traffic violations as defined by Section 383.51(c) of Title 49 of the Code of Federal Regulations (CFR), and Section 15210(p) of the California Vehicle Code (CVC). Whenever a person is required to hold a commercial learner permit (CLP) or a commercial driver license (CDL), Section 384.209, Title 49, CFR, requires states to report convictions of violations of any state or local law relating to motor vehicle traffic control within 10 days through the Commercial Driver's License Information System (CDLIS).

Section 384.226, Title 49, CFR, prohibits a state from masking, deferring imposition of judgment, or allowing an individual to enter a diversion program that would prevent a CLP or CDL holder's conviction for *any violation, in any type of motor vehicle*, from appearing on their CDLIS driver record. Parking, vehicle weight, and vehicle defect violations are exempt from both this provision and Section 384.209, Title 49, CFR.

When two or more serious traffic convictions are reported, Sections 15306 and 15308 CVC require a driver to be disqualified from operating a commercial motor vehicle (CMV). A driver convicted twice for a serious traffic violation in a three-year period is required to be disqualified from operating a CMV for 60 days by a state driver licensing agency (e.g., California Department of Motor Vehicles [DMV]). Upon a third conviction in a three-year period, the driver would be disqualified from operating a CMV for 120 additional days. This ability to disqualify unsafe drivers under these laws is circumvented and masking occurs when:

- A prosecutor allows a plea deal with conditions and the court allows nonadjudication (conditions of the plea deal are completed and the court dismisses the case).
- A prosecutor moves forward with the original charge; however, the court allows a withdrawal of the original plea and the driver enters a new plea to a lesser charge, without a legal basis.



- A prosecutor moves forward with the original charge; the court convicts on the original charge but allows traffic school in lieu of reporting the conviction to the DMV.
- A prosecutor moves forward with the original charge, but the court accepts a no-contest plea, defers the case for a period of time, and then dismisses the charge based upon the driver's clean history.
- A prosecutor reduces a moving-violation charge to a parking ticket because the driver was in a non-CMV and the court accepts the plea to the parking ticket.
- Prior to court, a prosecutor amends a moving-violation charge to an equipment-violation charge and the court accepts the plea to the equipment violation.

The following list includes violations which are considered serious traffic violations by the Federal Motor Carrier Safety Administration (FMCSA) and DMV:

- Speeding, 15 miles per hour (MPH) or more (regardless if the CLP or CDL holder was driving a CMV or their personal vehicle at the time of the violation).
- Reckless driving.
- Unsafe lane change.
- Following too closely.
- Any moving violation arising in connection with a fatal crash.
- Driving a CMV without obtaining a CLP or CDL.
- Driving a CMV without a CLP or CDL in the driver's possession (only when the driver was not properly licensed when cited).
- Driving a CMV without the proper class of CLP or CDL and/or the required endorsements.
- Texting while driving a CMV.
- Using a hand-held mobile telephone while driving a CMV.

If these violations are nonadjudicated, withdrawn, diverted, deferred, or amended as described previously, the FMCSA and the DMV are prevented from taking appropriate action on unsafe CLP and CDL holders. The FMCSA continues to work with the Judicial Council of California and the California District Attorneys Association to educate the members of these organizations about the importance of not masking violations during the adjudication process.

Law enforcement personnel have two important roles in reducing the possibility of violation masking from occurring. First, they can ensure the appropriate violation is documented on a citation. If an officer elects to issue a notice to appear, choosing the appropriate CVC section for the observed violation is important. Per Highway Patrol Manual (HPM) 100.68, Traffic Enforcement Policy Manual, Chapter 1, Patrol and General Enforcement Guidelines, "*officers should take appropriate enforcement action for all violations of the law witnessed.*" Additionally, in HPM 100.68, Chapter 3, Highway Enforcement, when issuing a citation for exceeding an absolute speed limit, officers should cite the appropriate violation. For example, an officer observed a CDL holder



exceeding the maximum speed limit by 17 MPH and the officer issued a citation for Section 22406.1 CVC. In this example, the officer issued a citation with the appropriate violation and was acting in accordance with departmental policy. Had the officer issued a citation for Section 22406(a) CVC or 22349(a) CVC, it would not have been the appropriate violation.

The second way that law enforcement personnel can reduce the possibility of violation masking is to respectfully decline to participate in masking activities when officers are subpoenaed to appear in court for a notice to appear they issued. Enforcement personnel have no authority to request, or agree to: nonadjudication, withdrawal, diversion, deferral, or amendment of a charged violation from a notice to appear. Further, there is no authority, statute, nor rule that authorizes a court official to direct enforcement personnel to involve themselves in such practices. Enforcement personnel appearing in court are witnesses, not prosecutors (*People v. Dragomir* [2005] 136 Cal. App. 4th Supp 1, at 3.) and courts that treat enforcement personnel as prosecutors are acting contrary to legal precedent. Specifically, in the case of *People v. Simpson* ([2014] 223 Cal. App. 4th Supp. 6.), the court held that law enforcement officers present in court are witnesses, not the prosecution. Finally, there is no legal authority permitting a witness to negotiate a disposition with a defense attorney in a criminal case.

Masking of violations by courts allows CLP and CDL holders, who may have otherwise had their driving privileges suspended, to continue driving CMVs, and circumvents CFR and CVC sections specifically enacted to remove unsafe CLP and CDL drivers.

Additional information regarding violation masking can be found on the National District Attorneys Association Web site: <https://ndaa.org/wp-content/uploads/Masking-Quick-Reference-Guide-Final-9.4.20-1.pdf>.

Questions regarding this IB should be directed to Commercial Vehicle Section, at (916) 843-3400.

OFFICE OF THE COMMISSIONER

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