

## Masking CDL Cases

September 2022

In this video we will define masking and outline how courts can monitor their CDL caseloads to ensure they comply with federal regulations.

Commercial drivers are held to a higher standard when they commit a vehicle-related offense. Driving large trucks and buses poses an increased public safety risk and there are federally mandated restrictions that do not apply to your average traffic case.

One of those restrictions is the prohibition on masking convictions. Masking can occur when a court, or other stakeholder, takes an action that allows the conviction of a CDL holder to be masked, deferred, dismissed, or go unreported. Masking is prohibited by 49 C.F.R. § 384.226.

The main idea is that a court's action can not conceal the true nature of the driver's behavior from being reflected on their driving record. An accurate historical record is critical, so the driver license agency can disqualify or withdraw commercial driving privileges when appropriate.

There are several ways a court could engage in masking. Plea deals with reduced or dismissed charges, when there is a factual or legal basis for the original charge, is masking. If there is a legitimate reason for dismissing or reducing a charge, then it is a best practice for the prosecutor and judge to document the reason to make sure the justification is on the record.

Entering a commercial driver into a diversion program or deferred adjudication, such as probation, can also be masking if the result is a dismissal or reduced conviction. There are situations, where plea deals, diversions and deferrals are legitimate actions. Prosecutors and judges still have discretion. The nuance is in the intent of the prosecutor or judge when offering a deal or dismissing a charge. Intent is hard to capture with data, and therefore measuring masking or knowing the extent of the problem is a challenge. However, there are performance measures that can be helpful.

The CDL Performance Measure Workbook outlines three measures that look at the number of CDL cases that result in: diversion/deferrals, charge reductions, and dismissals.

Again, none of these measures captures masking specifically. However, if you are monitoring CDL cases, and see that a large portion of cases are dismissed, judges and court staff may want to review these cases to determine if there is any underlying masking issue.

In New Mexico, the Court Operations Division is doing just that. The Division has an audit program that reviews Magistrate courts for compliance with standard operating procedures, state statutes, and federal regulations. As part of their process, auditors review CDL cases for those placed in a pre-prosecution diversion program or having a deferred sentence.

When issues are found, an audit report is sent to the presiding judge and court manager. Any areas of concern are shared, and formal findings require a response from the court. Auditors then conduct a follow-up 6-months later.

Courts can monitor their own performance with a report available in the Odyssey case management system. The report can be run at any time, so court staff don't have to wait on an audit to see how they are doing. Here is an example of that report. Each row is a case with a deferred sentence in the reporting period and includes case information so staff can look up further details and reach out to the appropriate judge or staff.

Since implementing the reports in 2013 along with yearly judicial training, New Mexico has seen a decrease in diversion and deferrals for CDL cases.

Other states have also developed tools to prevent masking, such as building logic checks into a case management system. These checks may prevent CDL cases from entering diversion programs or flag the cases for further review.

This allows court staff to follow up to ensure that cases going to diversion, still have timely and correct data sent to the driver license agency for the driver's record to be updated.

Training resources on masking, including courses for judges and prosecutors, are available from the National Traffic Law Center and National Judicial College. The Supplemental Resource Guide provides links to these organizations and materials.

A transcript of this video is also available and can be found on the Commercial Driving Resource Center Website.