

CDL, Masking and Overweight Scenarios

Hon. Jeff Monk
Justice of the Peace, Pct 2
Johnson County

© Copyright 2022. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, TX, 78701.

1

Resources

- Criminal Deskbook (3d ed. Sept. 2021) at pages 42, 118 – 125.
- National Traffic Law Center, Masking Quick Reference Guide: <https://ndaa.org/wp-content/uploads/Masking-Quick-Reference-Guide-Final-9.4.20-2.pdf> (see Handout 1)
- National District Attorney's Association, Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations (2d ed. 2017): <https://ndaa.org/resource/commercial-drivers-licenses-a-prosecutors-guide-to-the-basics-of-commercial-motor-vehicle-licensing-and-violations-second-edition-published-2017/>
- Legal Board Q&As: search for masking; CDL; overweight.

2

What is Masking?

- “Masking” refers to any practice aimed at keeping a 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) off of a CDL holder’s driving record.

3

What is Masking?

- The bottom line on the issue of “masking” and CDL holders:
 - No DSC for CDL holders (prohibited by Texas and federal law).
 - No deferred disposition for CDL holders for offenses related to **motor vehicle control** (prohibited by Texas law and federal law).
 - Plea bargaining by the defendant with prosecutors for reduced charges is permissible.
 - Filing a motion to dismiss charges by the State is permissible but court may refuse to grant the motion if the prosecutor is engaged in masking

4

Scenario 1

- Defendant John Jones is a CDL holder who received a ticket for speeding. He drives for Atlas Movers. John has not entered a plea but someone calls your office and says they are ready to pay the fine and court costs for John as soon as you tell them how much to pay.
 - Can your court accept this payment?
 - Can Atlas Movers enter a plea for John?
 - What do you have to have first?

5

Scenario 2

- Same facts as Scenario 1 except that no one in your office asks who is calling and three days after they tell the caller the amount of the fine and court costs, your office receives a check in the full amount from Atlas Movers. Your clerk deposits the check believing the case is closed. Two months later John Jones comes in and says he never plead guilty and just learned he has a conviction on his driving record and wants to enter a not guilty plea and go to trial.
 - What do you do?

6

Scenario 3

- A CDL driver receives a ticket for “no record of duty status.”
- Can this be dismissed:
 - As a compliance dismissal?
 - Using DSC?
 - Using a deferred disposition?

7

Scenario 4

- A defendant requested driver's safety for their speeding citation and had a Class C license only at the time of request. But when the defendant submitted his driving record, it was discovered that he was issued a Commercial Learners Permit after being granted DSC.
- Can the court dismiss the case with DSC or is the Defendant now ineligible because he now has a CLP?

8

Scenario 5

- A CDL holder receives a citation for speeding 10% over the posted speed limit. He pleads not guilty. At pre-trial the Assistant County Attorney offers to allow the defendant to plead to just “speeding” without the 10%. He asks the officer to “amend” his citation.
- Is this proper?

9

Scenario 6

- Can the Assistant County Attorney change a speeding charge to a seatbelt charge for a CDL holder?
- What about a non CDL holder?

10

Scenario 7

- A prosecutor wants to offer pretrial diversion to a CDL holder for a motor vehicle control offense.
- Is this masking?

11

Scenario 8

- Defendant holds a Nevada CDL. He received a ticket for Failure to Yield Right of Way (private drive). He plead not guilty and the ADA asked for the case to be reset 90 days later. The ADA told the defendant she would dismiss the case if he took DSC within the 90 days.
 - Is this masking?

12

Scenario 9

- An attorney wants to change a not guilty plea to no contest, waive trial by jury and give notice of appeal due to the client having a CDL. The defendant wants to make a payment or donation to a charitable organization and have the ticket dismissed so it does not show up on their driving record. The attorney says "most of the other JPs and County Attorneys allow this" but they are appealing because they're not sure your court will do so.
 - The Clerk will send a letter with the amount of fine, court costs and appeal bond to the attorney.
 - Is this okay?
 - Can the County Court do what the attorney wants?

13

Scenario 10

- A prosecutor has been offering deferred to CDL holders who have received citations for overweight violations. He is citing the Federal Motor Carrier Safety Administration §384.226 Prohibition on Masking Convictions: "The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a 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 CDL holder's driving record. . . ."
 - The prosecutor is saying that the part in parenthesis "other than vehicle weight" means he can offer deferred on the overweight citations.
 - Is the prosecutor right?

14

Scenario 11

- On offenses under TC 621.101 (a)(1) and (a)(2) the base fine is \$100-\$250. Upon conviction, the judge can assess an additional fine depending on how much the vehicle was overweight.
- Do we combine the \$250 and the additional fine or do we separate the additional fine as a separate fine such as the old Special Expense Fee which is now called a Fine?
- Can this additional gross overweight fine be added at the onset of entering the citation? Or do we have to wait until the defendant is found guilty in order to add the additional fine?

15

Scenario 12

- A CDL driver was cited for OVER GROSS WEIGHT (ZONED) 82200/58420/23780. The violation involved crossing a County Load Zoned bridge where the maximum weight limit is 58,420 pounds.
- What is the FINE or FINE RANGE applicable to Over Gross Weight (ZONED)?
- Is this covered by Section 621.506 or Section 621.507?

16

Questions?