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STATE OF OKLAHOMA
DEPARTMENT OF PUBLIC SAFETY

MEMORANDUM

TO: Judges / Prosecutors / Court Clerks

FROM: Oklahoma Department of Public Safety

DATE: May 1, 2009

RE: Commercial Driver's Licences – Reporting of Traffic Offenses / Convictions

By memorandum dated April 12, 2007, the Oklahoma Department of Public Safety (DPS) attempted to provide the courts and court clerks with some guidance on the issue of “masking” as it relates to a commercial driver’s license (CDL) and the reporting requirements under federal rules and regulations and Oklahoma state law. A recent federal audit found Oklahoma’s reporting requirements as outlined in that memorandum to be in compliance with the federal regulations. However, much confusion and consternation has continued to exist by the states as well as with the local prosecutors and courts and requests for clarification of those issues have repeatedly been submitted to and discussed by the federal authorities. Interpretations and clarification concerning enforcement of the “masking” rules are slowly forthcoming from the federal government or its representatives. As a result of an interpretation of which DPS has been recently advised, DPS is providing this memorandum to offer additional guidance to judges, prosecutors and court clerks.

While the definition of and reporting of “convictions” has not been affected, the recent federal interpretations being offered further identify what is to be defined as “masking.” The interpretations appear to provide for more flexibility to prosecutors in determining what charges or traffic offenses should be presented to a court for prosecution. Oklahoma DPS will be adopting this less restrictive approach effective immediately in its reporting requirements and enforcement of the “masking” rules.

As noted in previous correspondence, Title 47 O.S. , Section 18-101 establishes under what circumstances a court is to report a conviction for a traffic or other offense to the Oklahoma Department of Public Safety. In particular, subsection B states:

B. Within ten (10) days after:

1. The conviction of any person holding a Class D driver license; or
2. The conviction, as defined in subsection A of Section 6-205.2 of this title, of any

person holding a Class A, B or C driver license; or

3. The forfeiture of bail of a person;

upon a charge of violating any law regulating the operation of vehicles on highways every magistrate of the court or clerk of the court of record, in which the conviction was had or bail was forfeited, shall prepare and immediately forward to the Department of Public Safety an abstract of the record covering the case in which the person was convicted or forfeited bail, which shall be certified by the person required to prepare the abstract to be true and correct.

Title 47 O.S. Section 6-205.2 defines a "conviction" for the purpose of DPS reviewing a CDL (Class A, B or C) license:

A. As used in this section, "conviction" means:

1. A nonvacated adjudication of guilt;

2. A determination that a person has violated or failed to comply with this section in any court or by the Department of Public Safety following an administrative determination;

3. A nonvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

4. A plea of guilty or nolo contendere accepted by the court;

5. The payment of any fine or court costs; or

6. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated.

The fact that an action must be taken by a state against a commercial driver's license is set forth in the federal code and, in particular, the federal regulations. In addition to taking action against a driver holding a CDL, the regulations, state statutes and reporting requirements apply to a non-CDL holder for actions while operating a commercial motor vehicle, which may affect the driver's ability to obtain a CDL in the future.

The actions to be taken, under what circumstances and what penalties shall be imposed for failure to comply with the federal rules are set forth in 49 CFR. In particular, 49 CFR Subt B., Ch. III, Subch B, Pt 384, "Federal Motor Carrier Administration, Department of Transportation" provides the rules with which the states must comply in relation to identifying and reporting convictions against a CDL license.

The federal regulations continue to prohibit a state from "masking" any traffic or other charge by deferring prosecution or convicting the CDL holder of a "lesser" offense. However, the federal interpretations allow for a more practical approach in the definition and application of what constitutes a "conviction for a lesser offense." Previously, it was required that a licensing entity such as DPS be provided the original charge submitted to a prosecutor and that a conviction for that charge would be placed on the record, no matter the final, lesser charge for which the driver was ultimately convicted and sentenced. It did not matter whether the final conviction and sentence was the through a plea bargain or

judicial determination. Thus, when a court was reporting a conviction to the Department of Public Safety the court not only had to provide the offense for which the CDL holder was "convicted" but also the original charge. DPS was required to treat the conviction on the final charge as if the conviction was for the original charge. This requirement and process has been in effect since the new federal regulations were put in place.

New interpretations have modified how these issues can be addressed prior to any conviction and reporting requirement. It is still considered "masking" for a judge to reduce a charge that has been brought before the court. However, if a prosecutor determines that the initial offense is not appropriate and reduces the charge (either because of an anticipated plea bargain or insufficient evidence on the original charge) before it is presented to the court, such action would not fall within the scope of "masking." Once a charge has been presented to the court, that charge as submitted does fall within the scope of "masking." At that point, under almost any scenario, any action or finding by the court, other than an outright acquittal, will be subject to the reporting requirements on the charge that was filed or submitted to the court.

For example, a traffic ticket is written for "speeding in excess of thirty miles an hour over the posted speed limit." When submitted to the prosecutor, he, for whatever reasons, decides to file the ticket or traffic charge as "speeding in excess of fifteen miles over the posted limit." and that is the charge submitted to the court. After being presented the charge, the court reduces the charge and accepts a plea/convicts the driver of "speeding one to ten miles over the posted speed limit." The court record submitted to DPS is to reflect a conviction for speeding in excess of fifteen miles over the posted limit." To submit a conviction for "speeding one to ten miles over the posted speed limit" would be considered "masking" under the federal rules.

Finally, it should be remembered that even if a CDL holder pleads guilty and receives a deferred sentence, it is considered a conviction under the federal regulations as well as state law and must be reported as such to DPS. An outright acquittal does not require any reporting. But, any action or sentence which requires a plea of guilty or nolo contendere is considered a "conviction." This would include a deferred sentence in which the driver original pleaded "not guilty" or "nolo contendere." Further, any requirement of payment of any fees and/or costs, even if the case was "dismissed" causes the action to be considered and reported as a conviction. Under 47 O.S., § 6-205.2, each such is considered a conviction which must be forwarded to DPS, regardless of the final disposition of the traffic charges or whether the CDL holder completes the deferred term without incident.

As interpretations on these issues come forth, DPS will continue to review, and if necessary modify, the agency's reporting requirements to stay compliant with the federal regulations. The failure of the State of Oklahoma to take all reasonable means to comply with the requirements of the federal regulations could result in not only monetary consequences but also in the inability of the State of Oklahoma to provide a CDL license that would be recognized outside this State. Your cooperation is necessary and appreciated.