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# Abstract

Contemporary problems, including the increase in traffic accidents and safety concerns on American Highways, have compelled the Federal Motor Carrier and the National Judicial College to adopt actions and strategies to disseminate knowledge among legal system partners. Several issues were identified to be addressed, including the methods of “masking” commercial traffic violations, the lack of a unified system of driving licenses, and the lack of communication between federal, state, and judicial stakeholders in addressing “masking” and human trafficking. Moreover, related issues were recognized in the context of emerging challenges associated with technology, including vehicle reconstruction, autonomous vehicles, digitalized driver’s licenses, and an evolving trend of self-represented litigants. Therefore, the scope of the 2022 FMCSA national conference was to educate a cross-section of stakeholders on CDL regulations when adjudicating and sentencing drivers, including anti-masking and CDL reporting requirements, the threats posed by human trafficking, and cutting-edge issues involving digital drivers’ licenses, autonomous vehicles, and evidentiary issues in collision reconstruction and ethical and procedural concerns when addressing self-represented litigants. The purpose was accomplished by utilizing renowned authorities from various fields as presenters in their respective areas of expertise. The learning objectives were cross-sectional, relating to commercial driver’s licenses, and involved four main components: (a)identifying “masking” and properly applying FMCSA’s masking regulation, (b) explaining the challenges posed by human trafficking and commercial vehicles, (c) understand the legal issues posed by emerging technologies, including autonomous vehicles and digital driver’s licenses, and (d) develop strategies to promote access to justice and procedural fairness, consistent with ethical responsibilities toward self-represented litigants. The key findings of the conference included proposals on the coordination of efforts by multiple stakeholders and agencies to address the issue of masking for CDL drivers as well as evidentiary issues in collision reconstruction, initiatives to address the legal challenges in CDL drivers and human trafficking, and the significance and implications of autonomous vehicles and the legal responsibility of stakeholders in the future.

# Introduction

Federal Motor Carrier Safety Administration Regulation 49 CFR 384.226 prohibits the “masking” or deferral, dismissal, or non-reporting of a CDL holder’s conviction for any violation of state or local traffic control laws and the disqualifying offenses incorporated in 49 CFR 383.51. The Federal Motor Carrier Safety Administration has partnered with stakeholders to provide training to law enforcement (Commercial Vehicle Safety Alliance), prosecutors (the National District Attorney’s Association), state courts (National Center for State Courts), and the judiciary (The National Judicial College) to enhance compliance with 49 CFR 384.226. However, the masking of CDL convictions remains a critically important issue (Graber, 2022).

The National Judicial College (NJC) has trained over 7,000 judges to adjudicate CDL cases as part of a 20-year partnership with the Federal Motor Carrier Safety Administration (FMCSA). However, many of the judges who previously received training have retired, and a new generation of judges, who have yet to receive training in adjudicating CDL cases, is being appointed to the bench. The emergence of this new generation of judges, coinciding with advances in commercial motor vehicle technology (automated driving systems or ADS) and the growing recognition of the intersection of the trucking industry and human trafficking, demonstrates the ongoing need to enhance training in the adjudication of CDL cases to promote compliance with 49 CFR 384.226 and understand and objectively adjudicate emerging issues.

The changing judicial demographics, the emergence of new technologies impacting the adjudication of CDL cases, and the growing emphasis on the trucking industry in combating human trafficking, as well as the ongoing lack of compliance with 49 CFR 384.226, present a new set of challenges for the judiciary. The NJC developed this educational conference to address these challenges by bringing together stakeholders and subject matter experts to develop multidisciplinary strategies and lay the groundwork for the education and outreach needed.

Funding for the conference was provided through an FMCSA CDL PI Grant FM CDL 0434 20 01 00, and the conference took place from November 29 through December 2, 2022, in Baltimore, Maryland. In preparation for the conference, the NJC assembled a working group that included CDL subject matter experts in tribal and non-tribal law enforcement, state driver licensing agencies, and the judiciary to develop the agenda and identify faculty and potential participants. The working group also included subject matter experts with expertise in human-trafficking enforcement, accident reconstruction, and autonomous vehicle technology. Using guidance from the working group, the NJC developed the conference agenda (see Appendix A) and identified prospective faculty and invitees.

The NJC further determined that a site visit to a weigh and inspection station would benefit attendees who need to become more familiar with roadside enforcement operations. The State of Maryland graciously agreed to host a site visit to the Maryland Transportation Authority’s weigh and inspection station on I-95 at Perryville, Maryland. The site visit included observing a vehicle inspection and a presentation by law enforcement personnel.

A summary of conference proceedings by subject matter is presented in Section 2. The results of the facilitated group discussion, which led to the development of recommended actions, are presented in Section 3, and final conclusions are presented in Section 4.

# Summary of Conference Proceedings

## “Masking” on America’s Highways

Although differences exist from state to state, “masking” occurs when a court allows the conviction of a CDL holder for a traffic violation to be deferred, dismissed, or go unreported to the CDL driver’s record (49 CFR 384.226). The state must comply with the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII, the Federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 113 Stat. 1748, and regulations adopted under those acts in issuing or suspending a commercial license. In the event of a conflict between a federal statute or regulation and a state statute or rule, the federal statute or regulation must take precedence. A secretary of state is required to adopt rules, administrative procedures, practices, policies, organizational structures, internal control mechanisms, and resource assignments to ensure compliance.

These compliance measures must include, but are not limited to, provisions that:

* 1. Provide for full state participation in the national commercial driver’s clearinghouse;
  2. Require commercial drivers to have a single license;
  3. Reduce and prevent commercial motor vehicle accidents, fatalities, and injuries by disqualifying commercial drivers who have committed serious traffic or other designated offenses from operating commercial motor vehicles.

Federal regulations, adopted in every state, encourage courts and licensing authorities to maintain the most accurate driving records (for both in-state and out-of-state CDLs) and to ensure that appropriate enforcement actions are taken against unsafe CDL holders. Although differences exist from state to state, the basic “anti-masking” language included in 49 CFR 384.226 (see below) prevents states from deferring imposition of judgments, allowing diversion programs, or otherwise taking action to avoid a conviction for violating a traffic control law from appearing on a CDL holder’s driving record. The anti-masking provisions generally apply whether the CDL holder was operating a commercial motor vehicle or a non-commercial motor vehicle (CMV) at the time of the offense (Graber, 2022).

“49 CFR 384.226: States must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent CLP/CDL holder’s conviction for violation, in any type of motor vehicle, of state or local traffic control law ... from appearing on CDLIS driver record, whether the driver was convicted for an offense committed in a state where the driver is licensed or another state.” (Federal Motor Carrier Safety Regulations)

Notwithstanding the provisions of 49 CFR 384.226, the masking of CDL convictions remains in effect. The challenge this creates is that drivers who should otherwise be disqualified from operating a commercial motor vehicle continue to drive. Allowing non-compliant drivers to continue driving presents a significant safety hazard.

Figure 1 summarizes the steps required to prevent masking, beginning with roadside enforcement operations and continuing through the adjudicatory process, and concluding with updates to the driving records of CDL holders by state driver-licensing agencies. CDL holders are subject to the sanctions for disqualifying offenses included in 49 CFR 383.51. When convictions are masked, State Driver Licensing Agencies (SDLAs lack the conviction information needed to apply the appropriate sanction. Research conducted by the American Transportation Research Institute has established a statistically significant correlation between convictions for disqualifying offenses and the likelihood of a CDL holder being involved in an additional accident.

Figure 1: Steps to Eliminate Masking



It is essential that judges understand that citations involving a CDL are not routine traffic cases and are subject to Federal Motor Carrier Safety Regulations. The consequences of accidents involving commercial motor vehicles are much more severe because the occupants of smaller vehicles will be more significantly impacted.

## Tribal Courts and Masking

Tribal courts are subject to sanctions if they fail to address or conceal violations. One of the most pronounced impediments to accountability concerns how these convictions are reported to the Commercial Driver’s License Information System (CDLIS), which triggers broader penalties. Tribal courts follow the same three-step process, starting with law enforcement responding as boots on the ground, which results in the issuance of a citation. Next, a case is presented to the prosecutor and then to the judge. In this regard, tribal courts reflect no distinction when addressing masking violations. If tribal judges are unaware of the requirements of 49 CFR 384.226, they may not be aware that agreeing to reduced charges, plea bargaining, and placement into diversion programs are not permitted for CDL holders. Such activities lead to the masking of convictions (Morris, 2022).

Tribal court concerns related to CDLs include:

* Lack of specific tribal CMV/CDL codes and statutes. Every state has adopted all or almost all of the federally promulgated CMV/CDL laws. However, almost no tribes have adopted specific commercial motor vehicle codes. As a result, CDL cases may be adjudicated in the same manner as all other traffic violation cases, leading to the potential masking of convictions.
* Tribes often exercise their authority to issue tribal CDLs, most commonly to tribal employees such as school bus drivers. If there is a tribal enterprise that requires commercial motor vehicle operation, tribal employees may receive a tribal CDL that lacks the same legal force and effect if utilized outside of reservation boundaries. Ideally, Tribal CDL holders operating outside of reservation boundaries should possess a state DMV-issued CDL.
* Lack of reporting CDL-related violations and convictions.
* Lack of tribal law enforcement. Several tribes have small and dwindling populations. Tribal budgets are often severely limited, which limits the amount of law enforcement manpower available to cover often vast swaths of land.
* Lack of adequate judicial and law enforcement training
* Community pressure and political motivations to mask violations and spare CDL holders from losing employment in areas with abnormally high unemployment.

## Human Trafficking

Human trafficking is one of the most profitable criminal enterprises in the world. Net profits related to this industry are estimated at nearly $150 billion annually. Commercial motor vehicles have been discovered to provide a near-perfect tool for state-to-state transport of people for prostitution and labor-trafficking purposes. There are 40.3 million victims of human trafficking globally (Cole Funfsinn, 2022).

Truckers Against Trafficking (TAT) was launched in 2009 to educate, equip, empower, and mobilize trucking, bus, and energy industry members to understand and respond to human trafficking. As a result, the trucking industry has proven to be a valuable and effective resource in assisting law enforcement in recovering victims and arresting perpetrators (Cole Funfsinn, 2022). Specifically, the National Human Trafficking Hotline (NHTH) reported in 2022 that 41% of all calls to report human trafficking cases were reported by TAT.

Truck drivers, often referred to as “the knights of the highway,” are the eyes and ears that can help identify and thwart trafficking behavior that is less obvious to the public. This is possible because organizations such as TAT provide training and educational materials on how drivers can be vigilant in locations where traffickers often bring their victims, including truck-stop rest areas, city streets, gas stations, and hotels and motels. The training and educational materials enable truck drivers to better identify if victims, whether boys, girls, men, or women, are “working” by choice. (Cole Funfsinn, 2022).

Typically, human trafficking is perceived to be limited to foreign nationals or immigrants to the United States. However, with the emphasis on training and education about the dangers of human trafficking, there is a growing awareness of the plight of missing and murdered indigenous people, especially Native American women, who have fallen victim to human trafficking. In 2016 alone, there were 5,712 reports of missing American Indian and Alaskan native women and girls. These disappearances or murders are often connected with sex trafficking. (USDI, 2016)

Native Americans are more likely to be victims of human trafficking than other groups. In the United States, tribal citizens comprise 1.1% of the U.S. population but nearly 25% of human trafficking victims. Native Americans are even more over-represented in the realm of sex trafficking. A 2015 report by the National Congress of American Indians estimated that 40% of sex trafficking victims identified as American Indian or Alaskan Native.

Although Native American sex trafficking occurs predominantly in metropolitan areas, sex trafficking locations also include temporary housing for employees of large extraction projects such as pipelines, oil fields, oil sands, tar sands, and mining operations. These locations become attractive for trafficking due to a disproportionate ratio of men to women and men working on-site in isolated areas. Sex trafficking is also common along interstate corridors with a high volume of truck traffic, particularly at rest stops where male drivers away from home and family stop for food, fuel, and rest. Traffickers also use these same corridors to transfer victims to trafficking locations.

*Causality:* A theory relating to the causes of overwhelming numbers of Native American women and children being victims of human trafficking was introduced during the 2022 Federal Motor Carrier Safety Administration National Conference. Traumatic events that occur in the lives of individuals have the potential to dramatically affect their functioning in terms of physical health, mental health, and social behavior. Some Native Americans have endured individual and cultural traumas that have profoundly affected their personal and communal lives. Some of these events occurred in the distant past, producing effects that have rippled across generations to this day. Others have occurred more recently. The impact of cultural traumas from the remote past intermingles with recent traumas, resulting in a cumulative and compounding spiral of traumatic effects (Wiechelt, Gryczynski, & Lessard, 2020). Native Americans are considered a vulnerable population. Statistics from the 2010 U.S. Census, National Intimate Partner and Sexual Violence Survey, and GAO Foster Care report illustrate that Native Americans experience higher levels of poverty, rape, and entry into the foster system – all risk factors for trafficking. Native women experience violent victimization more than any other U.S. population. A congressional report found that 34.1% of Native American and Alaska Native women will be raped in their lifetime, and 64% will be physically assaulted (Human Trafficking Search, 2018).

Native American children are more than twice as likely to be in foster care as children in the general population, and 32.4% of Native children and youth live in poverty. This is presented as an outcome and a pattern associated with intergenerational trauma (Sweet, 2015). The intergenerational trauma patterns associated with the history of tribal relocations, boarding schools, and large-scale adoptions of Native children have increased the risk of human trafficking among Native women and girls (Sweet, 2015).

The prevalence of sex trafficking of Native Americans is not solely based on the multiple risk factors associated with the community; it is, in many ways, a [**continuation of the marginalization of Native populations**](https://www.voanews.com/a/sex-traffickers-targeting-native-american-women/3063457.html) in the United States. Native women have been fetishized, bought, sold, and traded since the European colonization of the American continent began. The trauma experienced by tribal nations at the hands of the U.S. government has contributed to high levels of poverty, substance abuse, isolation, and distrust of authority. These experiences can increase the likelihood of trafficking and complicate the legal response (Human Trafficking Search, 2018).

## Autonomous Vehicles

The Society of Automotive Engineers (SAE International) defines different types of autonomous cars and vehicles through the assignment of driving levels ranging from zero (0) to five (5). (Figure 1) A diagram of a car driving level

Description automatically generated with medium confidence

Each level succinctly identifies the distinct amount of automated assistance or control the vehicle can perform. Level Zero (No Automation) means the driver is in complete control of all driving tasks. Level One (Driver Assistance) refers to vehicles equipped with limited automated systems, such as cruise control, which have been available for decades. This system performs minimal driving tasks. With Level Two (Partial Automation), the vehicle offers multiple driver-assistant functions, including adaptive cruise control and “lane keeping” assistance. However, it is anticipated that the driver will always remain in control of the vehicle. This is similar to the functionality of Tesla cars, which offer full or complete autonomous driving for an additional $10,000. Even though the driver is held legally and physically responsible for the car, even when their hands are not on the steering wheel, in Level Three (Conditional Automation), the vehicle can drive by itself for a certain amount of time. A Level Four (High Automation) vehicle can perform all tasks under specific conditions within a service area, but it will not operate under severe weather conditions. Finally, Level Five (Full Automation) allows the vehicle to perform all driving tasks regardless of weather conditions. Passengers can set a destination, and the car will take them there (Merchant, 2022).

More than 1.2 million people are killed on highways every year around the world. The United States accounts for nearly 40,000 of these lost lives. According to the National Highway Traffic Safety Administration, 93% of these crashes are caused by human factors, including alcohol, distraction, and drowsiness or fatigue. Drivers have become especially vulnerable due to extended daily commutes, congested highways, and travel routes (Merchant, 2022).

There is no suggestion that autonomous vehicles alone will eliminate all vehicle crashes. However, research suggests that approximately 80% of vehicle crash fatalities could be eliminated by launching and deploying more robust vehicle automation (Tasha Keeney, 2015).

By now, most drivers are familiar with the improved vehicle warning systems available in most modern passenger and commercial vehicles. These systems alert the driver when they are drifting into another lane. In some instances, they can assist with steering the wheel, safely stopping, and warning of potential collisions with nearby vehicles or objects (Merchant, 2022).

Experts suggest that eliminating or limiting human-driven vehicles could improve road safety. The Centers for Disease Control reported that in 2020, 30% of fatal accidents were attributable to alcohol. The National Highway Traffic Safety Administration reported that in 2021, speeding violations contributed to 29% of fatal accidents, with 30% of those being attributable to speeding, and 21% to distracted driving (Merchant, 2022).

The primary technology that autonomous vehicles rely upon is Artificial Intelligence, or AI. These systems are designed to capture and analyze millions of images and store vast amounts of data. Because AI systems continually refine their processes to become “smarter” over time, they become more adept at preventing crashes and collisions at a significantly better rate than human drivers. However, with all these benefits, it is essential to understand that AI is a machine that processes data stored in a computer. When this technology is applied to autonomous vehicles, there must also be an appreciation that these machines/vehicles lack certain human qualities. For example, AI technology in autonomous vehicles often struggles to interpret human nonverbal cues, such as hand gestures and eye contact. Environmental conditions, such as road stripes and traffic sign changes, can also confuse the technology. Humans perceive these minor modifications more easily than machine technology (Merchant, 2022).

There is no ability to query, question, or interrogate the computer in the event of an autonomous vehicle incident. Only the machine data can inform humans about why certain “decisions” were made, why an error occurred, or what circumstances caused a particular outcome. Applying existing law to this ever-evolving landscape of technological advancements will present a challenging legal patchwork in the absence of comprehensive federal regulations. Perhaps the most pressing legal questions will be the assumption of liability following a collision and identifying the appropriate party responsible for data ownership (Merchant, 2022).

There are no established criteria to determine the real-world safety advantages of autonomous vehicles over human-driven vehicles. This is due to the limited deployment of technology, which makes a data-driven comparison difficult. A wide range of potential scenarios impact safety, including vehicle age, available safety features, driver age, region of the country, and weather conditions. Moreover, the data required to directly compare safety impacts directly are, at best, limited (Merchant, 2022).

## Ethics and CDL pro se litigants

Ethical issues can arise when handling and disposing of traffic-violation cases involving commercially licensed drivers who choose to self-represent during legal proceedings.

Both the 6th and 14th Amendments to the United States Constitution protect a litigant’s right to proceed in a matter without counsel when they have done so voluntarily and intelligently. This is often referred to as pro se representation or “on my own behalf.”

Several issues can arise when a litigant in court elects to represent themself, including:

* Lack of knowledge of the law and court procedures;
* Lack of experience and confidence in presenting the facts of the case;
* Lack of appreciation for the often complex and foundational requirements necessary to connect the case facts to the charge elements.

Judges are responsible for being neutral and impartial. They must also not provide a self-represented litigant with an unfair advantage through extensive court guidance. This delicate balance of neutrality and ethical obligations can strain the contextual definition of “reasonableness.” (Fisher, 2022).

Edmund Burke, a renowned English philosopher, stated that an impartial judge is the primary requirement for administering justice. The original Canons of Judicial Conduct, adopted by the American Bar Association in 1924, provided in Section 4 that “a judge’s official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his behavior, not only upon the Bench and in the performance of judicial duties, but also his everyday life, should be beyond reproach.” The Code of Conduct for United States Judges (United States Courts, 2019) reiterates this principle in Canon 2: “A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities” (Fisher, 2022).

These principles are so important and enduring that they are enshrined in the modern version of the American Bar Association’s Model Code of Judicial Conduct. The Model Code promotes judicial independence, integrity, and impartiality.

Recent comments added to Model Code Rule 2.2 indicate that this rule is not violated when a judge reasonably accommodates a self-represented litigant. For example, the Massachusetts Supreme Court has issued an order allowing limited assistance in representation to promote and comply with the reasonable accommodation obligation. Nevertheless, all states have yet to adopt the Model Rules uniformly. This leaves the issue of “reasonable accommodation” unresolved. (American Bar Association, 2023).

## Procedural Fairness

Litigants in every proceeding, particularly self-represented ones, must be respected and treated with dignity when provided their day in court. An essential step in ensuring this goal is met requires the judiciary to take meaningful steps to explain court processes and the decision-making process. It is also imperative to outline what is expected of the litigant so they can avoid running afoul of court rules or requirements. Perhaps most importantly, litigants want and deserve the opportunity to be heard, regardless of the case’s outcome. This “body” of treatment for litigants has more recently been referred to as access to justice. Access to justice includes three major components: physical or digital access; procedural justice/procedural fairness or feeling and knowing that the process is fair for everyone; and the right to competent and well-resourced counsel (Williams-Byers, 2022).

Access to justice can be the physical act of entering the courthouse or attending a hearing using a digital or virtual platform such as Skype, Zoom, or Webex. This access is literal in nature but monumentally critical in providing litigants with the first step in outlining their concerns to the court (Williams-Byers, 2022).

Procedural fairness ensures equal treatment for all litigants regardless of case type or subject matter. Under this principle, litigants are provided with information regarding their case, treated with respect, and allowed to ask questions about the proceedings. The court may also take time to explain nuanced (legal) concepts, outline processes or behavior expectations, and clarify courtroom occurrences, such as rejecting a plea offer (Williams-Byers, 2022).

CDL holders are particularly concerned about access to justice because of the nature of their alleged offenses: traffic. They are often self-represented but desirous of appointed counsel. This final element, the assurance of well-resourced counsel, is imperative to ensuring the litigant has had a fair experience in court. This requires the appointment of counsel with the time, ability, and knowledge to handle the often complex nature of traffic cases involving CDL holders. Due to traffic courts generally having high-volume dockets, there is often difficulty in identifying appointed counsel (if required or permitted by law) capable of adequately handling traffic matters for CDL holders (Williams-Byers, 2022).

Judges must balance the rights of the accused against the responsibility to protect against convictions that mask violations under 49 CFR 384.226. Although 49 CFR 384.226 prohibits plea bargaining in CDL cases, it should be noted that not all plea bargains are “masking.” However, where masking is suspected, the record must be clear. It must outline a rationale for plea rejection and provide a clear explanation to the litigant regarding their plea ineligibility or the court’s denial. These steps help reinfuse faith in the justice system and provide litigants with opportunities to understand court processes, even when case dispositions are unfavorable.

To ensure procedural justice and fairness in CDL cases, as with all cases, a litigant should:

* Understand their legal rights and court procedures;
* Feel that the processes are transparent and equitable, regardless of age, gender, race, or other factors;
* Have the opportunity to tell their side of the story;
* Feel they have been treated with dignity and that their rights have been respected. (Williams-Byers, 2022)

Procedural justice is not the solution to all problems that arise in court or that the justice system as a whole faces. However, it represents a relatively easy and low-cost approach to ensuring smoother and more respected court processes. It can yield significant dividends by enhancing public trust and confidence in the justice system.

## Evidentiary Issues in Reconstructing Motor Vehicle Accidents

Judges need to understand the basic parameters of a crash investigation in order to make informed rulings during hearings and trials. Judges need to know how information culled from these investigations relates to search warrants they or their colleagues may have authorized.

With search warrants, judges need to be able to read the “four corners” (Farb, 2016) of the document to ascertain if there is any evidence that a driver has engaged in reckless conduct before the crash occurred (Varner, 2022). Judges should also be prepared to make specific evidentiary rulings based on crash analysis and information from the reconstruction of the event. These decisions should be based on the judge:

* Recognizing the technologies used in accident reconstruction that are accepted by the state and court;
* Identifying the proper terminology in a commercial motor vehicle case regarding the admissibility of evidence;
* Having a general knowledge of the mechanical complexity as well as the chemical compounds of a commercial motor vehicle;
* Seeking additional guidance and input from judges with similar case experience, if necessary, when reviewing the reports or testimony of experts;
* Establishing a process to verify that proposed experts are qualified to testify about the specific matters related to their knowledge, skills, ability, and training.

Understanding the differences between a commercial motor vehicle and a car or motorcycle is essential. Commercial motor vehicles are considered “articulated” vehicles because they have a permanent or semi-permanent pivot joint that enables sharper turning (Sunday & B.A.K.O., 2021). Articulated vehicles also refer to a power unit pulling a trailer. Judges need to recognize some of the outstanding and essential features of commercial vehicles, such as late-model air-braking systems, which are very different from those employed in the 1980s and 1990s.

It is common to rely upon new technology, such as video, to prove or disprove an event or establish liability. However, judges would benefit from considering such material with skepticism, as these devices have been shown to lack 100% accuracy (Varner, 2022).

Historical methods of accident investigation and reconstruction have also proven to be unreliable. For example, tire skids on roads, used as a measurement of speed, trajectory, or causation, have recently been shown to be insufficiently accurate. Judges should ask basic questions such as the year a truck or trailer was manufactured, the age and condition of the tires, and the road condition at the time of impact. They should inquire about information only available through the event data recorder, or EDR. This device acts as the “black box” for a commercial motor vehicle. It can record and provide data related to the engine, airbag control module, and vehicle speed at the time of impact. The aim is to determine the root cause of the accident, such as driver error, a mechanical problem, a vehicle defect, or a roadway design issue (Varner, 2022).

Trucks, like passenger cars, are equipped with crash-mitigation systems. The two most common are the Detroit Assurance mitigation system and the Bendix Wingman. These “driver assist” systems are inherently limited. For example, they do not allow for fully autonomous driving, even with sophisticated communication and speed-reduction systems in place.

Overall, technology has significantly enhanced crash investigations, primarily due to the introduction of newer technologies that provide time-saving capabilities, such as the ability to 3D scan an accident area using a drone scanner. However, whether a crash scene is measured by old-fashioned tape or a drone, it is most important that judges understand the crash analysis and that the experts presenting evidence in court have been verified as subject matter experts (Varner, 2022).

## Digitalized Mobile Driver’s Licenses (mDLs)

State driver-licensing agencies are in the process of implementing mobile driver's licenses (mDLs), which are digital representations of the information contained in a physical driver's license or non-driver identification card. The mobile driver's license is expected to be the future of licensing and will also serve as proof of identity (Stephens, 2022).

Implementation guidance for an mDL is provided through the American Association of Motor Vehicle Administrators. This nonprofit organization develops model programs and systems for state driver-licensing agencies and serves as an information clearinghouse. Implementation guidelines were initially developed and published in 2019. The guidelines were revamped and updated in 2021 and again in 2022, with the 2022 update including appendices on digital trust services. Digital trust is utilized by both digital service companies and organizations, as well as their customers, to ensure the privacy, security, and reliability of their online services in protecting data.[[1]](#footnote-1)

Establishing a digital trust for mDLs includes addressing the following:

* Security and privacy of data
* Data access and use
* Compliance with standards currently being developed by the American National Standards Institute and the International Standards Organization
* Establishing technical specifications and common provisioning guidance
* Establishing jurisdiction for mDLs
* Technical interoperability

Mobile driver's licenses will eventually be accessible through mobile phones, tablets, computers, and smartwatches. Links to mDLs can be accessed through scanning a barcode, QR code, or a weblink to a virtual document. Data is encrypted and is accessible by using devices that can translate the encryption (Stephens, 2022)

The standards under development address where and how mDL data should be stored and accessed. The primary method recommended is having the issuing authority maintain mDL data. Governing or issuing authorities would control access through security keys and the consent of the mDL holder (Stephens, 2022).

Mobile driver's licenses are designed to replace physical credentials. The goal is to further enhance the security of driver's license personal identifying information (PII). State driver-licensing agencies continue to invest in protecting the security of physical credentials, but in the longer term, mDLs are intended to become the standard driver's license.

# Recommended Actions

The final activity of the conference was a facilitated discussion where participants recommended actions to address the issues examined. Here are their recommendations.

## Masking on America’s Highways

* For CDL cases, comply with 49 CFR 384.226 and its prohibition on masking, including plea bargaining or probation before judgment. This would help eliminate both unintentional and intentional masking associated with improper classification of defendants.
* Improve coordination and communication between the state executive and judicial branches and develop strategies to eliminate masking. An example of this coordination would be to include CDL representatives on traffic records coordinating committees and highway traffic safety offices sponsored by Governors’ Highway Safety Offices.
* Improve training for roadside enforcement personnel on the requirements of 49 CFR 384.226 to eliminate the “roadside reduction” of violations when a CDL holder is stopped for disqualifying offenses. Issuing a warning or reducing the violation can potentially permit unsafe and noncompliant CDL holders to continue to drive.
* Offer more outreach and education on the National Tribal Judicial Center’s published guidance on the legal background supporting the authority of tribal governments to enact CDL laws and the tribal center’s model Tribal CDL statute.

## Human Trafficking

* “Take the key out of the ignition” by imposing lifetime disqualifying sentences to CDL holders under 49 CFR 383.51 (Cole Funfsinn, 2022). The Human Trafficking Act of 2000 and its reauthorizations clearly define human trafficking. Judges hearing a human-trafficking case involving a CDL holder must impose the appropriate sanction under 49 CFR 383.51.
* Have the judiciary work with organizations such as TAT to improve the judiciary’s understanding of the challenges and issues related to human trafficking and the impact that trafficking has on victims.
* Train law enforcement personnel to identify trafficking. This would include training state and local law enforcement. It also means improved commercial motor vehicle enforcement, including compliance with relevant federal regulations and the conduct of effective enforcement actions.
* Distribute information on identifying and reporting possible trafficking to drivers at weigh stations, ports of entry, and rest stops.
* Incorporate training on human trafficking as part of standard CDL curricula, as well as mandatory safety training offered by companies.
* Make law enforcement personnel and CDL holders aware of the Human Trafficking Resource Center’s hotline to obtain guidance on how to interact with potential victims using the victim-centered approach.
* Increase awareness of human trafficking materials available in Spanish and French for use in Mexico and Quebec province, Canada.
* Extend training to CDL holders on identifying and reporting suspected trafficking to passenger vehicle drivers, for-hire buses, and school bus drivers.
* When prosecuting a human trafficking case involving a CDL holder, prosecutors need to ensure that every citation contains the correct information and identifiers (date of birth, full name, CDL license number). Prosecutors must also ensure that the case moves forward, even if the driver was in a personal vehicle at the time of the offense.

## Judicial Ethics and Aspects of Commercial Vehicle Cases

Ensure that litigants understand basic legal concepts that will govern their trial – for example, the Rules of Evidence. Judges must still balance providing such guidance and maintaining impartiality. A judge can accomplish that by:

* Asking neutral questions (e.g., Tell me more about how you see Ed?) that elicit crucial information from a litigant without guiding a litigant to a specific answer (Triebwasser, 2022).
* Explaining the process and purpose of each witness’s appearance and the process for conducting settlement negotiations. Do not telegraph any indication of the verdict.
* Explaining that a judge can give information but not legal advice. Set the tone for managing the trial by clearly defining its purpose.
* Not allowing proceedings to digress by presenting evidence and testimony that are not germane or specific to the case.
* Not escalating proceedings unless necessary. Maintain a calm, businesslike, and dignified manner. If an individual continues to get out of control, address the situation appropriately.
* Being aware of how nonverbal behavior can be interpreted.
* Maintaining eye contact as a sign of respect.
* Speaking using a natural pace and expressive inflection. Do not speak down to anyone. Be courteous (Triebwasser, 2022).
* Asking a self-represented litigant, the following questions (Triebwasser, 2022):
  + Have you ever studied law (pertinent to the matter in front of the court)?
  + Have you ever represented yourself in this kind of proceeding?
  + Do you understand the charges you are facing?
  + Do you realize that if you are found guilty of these offenses, the court can impose penalties that may include a fine, a jail sentence or both?
  + Do you realize that no one can advise you on how to try your case if you proceed as a self-represented litigant?
  + Are you familiar with the Rules of Evidence?
  + Do you understand that if you represent yourself, you will need to follow the Rules of Evidence to introduce any evidence, and you will need to do so?
  + Do you understand that the rules of criminal procedure will bind the proceedings and that these rules establish how the proceedings will be conducted? That these rules govern the way and what is going to happen to a person?
  + Do you understand that the prosecutor is an experienced attorney and that you will be treated equally to the prosecutor? Do you understand that the prosecutor’s knowledge of the law and their experience may work against you?

# Conclusion

Conference participants noted that a critical step in enhancing compliance with 49 CFR 384.226 is improving communication, program activity coordination, and education and training between a state's executive and judicial branches of government. This is necessary to ensure that both branches understand the dangers of masking (allowing unsafe drivers to continue operating) and the importance of compliance with 49 CFR 383 and 384.

*Human trafficking* is a complex issue that poses a severe threat to the welfare of society. Addressing human trafficking involves multiple agencies' collaboration, understanding, empathy, and resilience. It also involves consideration of the impact of trafficking on victims. Victims can assist in the training of truck drivers. The continuous education of public and private stakeholders will be critical for identifying trafficking and ensuring appropriate enforcement, including compliance with the lifetime CDL ban sanction specified in 49 CFR 351.

A key stakeholder group to engage is the tribal courts. Native American women are highly vulnerable to becoming victims of trafficking, and providing education, technical support, and funding for tribal courts will be a critical step in addressing trafficking. This includes providing education and training on 49 CFR 383 and 384 requirements, as well as supporting tribal courts in adopting and enforcing tribal-specific CDL regulations.

*Autonomous vehicles* are considered the future of automotive transportation. The adoption of autonomous vehicle technologies has the potential to reduce accidents, injuries, and fatalities. An additional potential benefit is that autonomous vehicles would provide access to transportation services for populations currently lacking such access. However, the development and deployment of the technologies have outpaced the statutory and regulatory framework for autonomous vehicles. Although the goal of manufacturers is "zero hits," addressing factors such as road and weather conditions, as well as technological limitations (e.g., encountering a situation that the autonomous vehicle software is not trained to recognize), has the potential to adversely impact the effective operation of autonomous vehicles. The challenge for the judiciary is that existing statutory and regulatory frameworks may not provide the necessary guidance to adjudicate cases involving autonomous vehicle incidents objectively. Participants also noted that a key issue facing the judiciary will be determining liability in cases involving autonomous vehicles. An example would be determining who is liable for an unexpected system failure. In adjudicating these types of cases, the judiciary will face the challenge of ensuring compliance with fundamental legal and constitutional constructs.

When adjudicating cases involving *motor vehicle accidents*, judges must be aware of the evidentiary issues associated with accident reconstruction. This includes understanding the technologies used, familiarity with the terminology, and a general knowledge of vehicle mechanics. Additional resources a judge can draw on are other judges who have presided over these cases and expert witnesses. Ideally, judges should be able to determine the cause of the accident and the parameters involved to assess the driver's responsibility and other factors that contributed to the accident.

The *mobile driver's license* (mDL) is intended to be a digital representation of either a physical driver's license or a non-driver identification card. It is expected to be the future of licensing and proof of identity. Data privacy and security, as well as access to and use of data on an mDL, are critical issues that must be addressed. The same applies to compliance with international standards currently under development. Conference participants noted that, as with autonomous vehicles, statutory and regulatory frameworks must be developed to ensure that judges can objectively adjudicate cases involving mDLs.

The *ethical issues* in dealing with pro se litigants in CDL cases necessitate special handling to ensure procedural fairness. Judges need to be neutral and impartial, explain complex legal concepts and proceedings, set clear expectations, and continually ask questions to assess the pro se litigant's level of process comprehension. The primary elements of procedural justice must be present to ensure that the litigants (a) understand their rights and the procedures, (b) perceive the process as neutral, (c) believe their voice is being heard, and (d) feel they are being treated with dignity.

The *2022 FMCSA National Conference provided new insights and revealed exciting perspectives in its thematic units*. The conference successfully educated a cross-section of stakeholders on CDL regulations, particularly in the context of adjudication and sentencing drivers. The conference discussions and conclusions included proposals on anti-masking and CDL reporting requirements, the threats posed by human trafficking, and issues involving digital licenses, autonomous vehicles, and evidentiary matters in collision reconstruction. The National Judicial College will continue to educate the judiciary and address the challenges arising from the need for human interaction and transportation on America's motorways. Moreover, the college acknowledges that complex CDL contemporary problems require present-day solutions, so it continually seeks to collaborate and synergize with stakeholders to produce pragmatic solutions and further its mission of making the world a more just place by educating and inspiring its judiciary.

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# Appendix A: Conference Agenda

A close-up of a conference

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A screenshot of a schedule

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A screenshot of a computer

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1. Adapted from: <https://www.techtarget.com/whatis/definition/digital-trust?Offer=abt_pubpro_AI-Insider>

   “Definition of Digital Trust,” Jeffrey Ritter, University of Oxford. [↑](#footnote-ref-1)