

ADDENDUM TO MEMORANDUM

TO: Judges / Prosecutors / Court Clerks

FROM: Oklahoma Department of Public Safety

DATE: October 15, 2009

RE: Addendum to memorandum dated May 1, 2009

Commercial Driver's Licences – Reporting of Traffic Offenses / Convictions
– **Deferred Sentences**

The Department of Public Safety has received a request to clarify whether, and if so under what circumstances, a deferred sentence entered in a traffic case against a driver holding a commercial driving license must be forwarded to the Department of Public Safety for entry on the individual's driving record even though the conviction will be erased at the conclusion of the probationary period. In accordance with federal regulations and state law, it is the opinion of DPS that a deferred sentence entered in such case must be reported to the Department even if the driver successfully completes the probationary period and the court later dismisses .

As noted in the original memorandum, under federal guidelines and state law, in particular, 47 O.S., §6-205 a "conviction" for purposes of a commercial driver's license includes:

. . .

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

5. The payment of any fine or court costs;

. . . .

Under 22 O.S., §991c (A), a court has the general authority to enter a deferred sentence in a traffic case. However, before a deferred sentence can be entered, a verdict must have been entered or the defendant must have entered a "plea of guilty or upon a plea of nolo contendere." Because a plea of guilty or nolo contendere is legally required for the entry of a deferred sentence, the entry of that deferred sentence amounts to a "conviction" for purposes of a commercial driver's license. Although "deferred sentence" is not specifically mentioned in the federal regulations or state statutes as a "conviction", the underlying prerequisites of a plea of guilty/nolo contendere are specifically noted. Under this set of circumstances, the plea is all that is necessary and an actual judgment of guilt is not necessary.

Moreover, but for very limited situations, it is the general practice of most courts to assess fines, court costs or other administrative fees on a defendant, even one who has received and completed the deferred sentence. The requirement of payment of any fees, fines and/or costs, whether the result of a deferred sentence or any other judicial determination, amounts to a conviction under the federal regulations. Under either of these scenarios, the judicial determination/action is to be treated as a "conviction" and the information is to be forwarded to the Department of Public Safety for appropriate action.