

# FAQ SECTION



## **REPEAT OFFENDER**

**QUESTION:** What is the definition of a repeat offender?

**ANSWER:** “Repeat Offender” as used in the new legislation applies to persons who are eligible for vehicle plate confiscation and immobilization. This applies to any 2<sup>nd</sup> alcohol or drug violation while operating a motor vehicle, or a 3<sup>rd</sup> mandatory additional resulting from a moving violation while suspended or revoked, and is based upon a reading of the driving record to determine prior convictions and related license actions. Convictions appearing on the driving record prior to October 1, 1999, will be used to determine eligibility for repeat offender status.

**QUESTION:** How does the police officer know a defendant is a “repeat offender”?

**ANSWER:** At the time the officer requests a driving status, if the defendant’s record contains the requisite number of prior convictions, the record will return a message indicating the number of convictions and the requirement to issue a paper plate and confiscate the metal plate.

**QUESTION:** What if a defendant tells the police officer the driving record is wrong; that the court must have made a mistake, there should be no priors, or all suspended tickets have been paid and the record just isn’t up to date?

**ANSWER:** Each officer will handle these situations according to departmental or personal policy.

**QUESTION:** Should courts return paper plates to law enforcement if information on the paper plate is incomplete? (Something is missing: VIN, make, year, etc.)

**ANSWER:** The court should call the police department or return a copy of the paper plate; whichever process works best for the court.

**QUESTION:** What if the police turn in the metal plate to the court?

**ANSWER:** The court should not accept the plates. Law enforcement is supposed to destroy the plate. See MCL 257.904c

**QUESTION:** Does the police department confiscate a leased, rental, or commercial vehicle plate? What about out-of-state plates, tribal plates, or trailer plates?

**ANSWER:** Yes, leased vehicle plates are confiscated. Neither rental, tribal, trailer, manufacturer, dealer, U.S. Government, nor out-of-state vehicle plates are confiscated unless they are International Registration Plates.

**QUESTION:** If the metal plate is expired at the time of the stop, would a paper plate be issued?

**ANSWER:** Yes. Issue the paper plate showing the expired date. If they continue to drive the car without renewing the registration, they could be re-ticketed for the expired plate.

**QUESTION:** What if the plate is improper or there is no plate on the vehicle?

**ANSWER:** The improper plate should be removed and a paper plate is issued, but it is not placed on the vehicle. For both an improper plate or no plate, the officer should leave the plate number field on the paper plate blank. Law enforcement enters the vehicle identification number (VIN) and other information into LEIN. The court gets their copy of the paper plate, but does not enter anything in the plate number field. A Notice of Adjudication (NOA) is issued on adjudication. Immobilization may be ordered.

**QUESTION:** What does the officer do if there is already a paper plate on the vehicle?

**ANSWER:** The officer should take the previous plate off of the vehicle and destroy it, then issue a new paper plate. Each adjudication gets a Notice of Adjudication. The drivers/defendants may be different for each paper plate.

**QUESTION:** Under what circumstances will vehicles be towed?

**ANSWER:** In addition to OUIL and DWLS violations where there is no licensed, sober person available to drive the vehicle, vehicles are towed if they are reported stolen, if the registration is improper, or if the vehicle is needed as evidence.

**QUESTION:** Who pays towing fees if the vehicle is towed?

**ANSWER:** This is determined by the owner; the procedures are the same as occur now.

**QUESTION:** Is the court notified of the location of the towed vehicle? Does the court have any obligation to communicate with the vehicle storage facility?

**ANSWER:** The court is not involved with the towing or storage of a vehicle towed at the time of a stop/arrest. The court may direct the owner/defendant to the police department that handled the arrest for this information.

**QUESTION:** When does a paper plate expire?

**ANSWER:** The paper plate expires when the underlying plate expires or when adjudicated, whichever is sooner. If the underlying plate expires, the paper plate must be renewed at the branch office. The applicant will receive a paper plate with the new expiration date.

**QUESTION:** Can an “innocent owner” get the paper plate cleared before adjudication?

**ANSWER:** No. At the time of adjudication, the owner may obtain a new plate if they are otherwise eligible. The fee for a replacement plate is \$5.00. If the plate is expired, full fees will be required.

**QUESTION:** How does the court know who the owner of a vehicle is?

**ANSWER:** The court could request law enforcement to provide a registration status with ownership information along with the ticket or complaint and the paper plate. Or, the court could run this if they have LEIN or SOS access.

**QUESTION:** What if the defendant fails to appear and there is a Bench Warrant? How long must the innocent owner have a paper plate?

**ANSWER:** There is no provision in the current statute for this situation. The owner can continue to renew the paper plate each time it expires.

**QUESTION:** What if the plate is confiscated in error?

**ANSWER:** If the error is discovered the same date as the confiscation, simply delete the entry from the LEIN. If the error is not discovered until a later date, you may remove the flash by sending a message in through LEIN requesting a correction to the record that includes the year, make, VIN, plate number, and date of offense.

**QUESTION:** How will I know that a person is required to have an interlock device on the vehicle they are driving?

**ANSWER:** Driver Assessment and Appeal Division of the Department of State will order the restriction; license and status will read: “May only operate vehicle equipped with interlock device, may drive to and from calibration, original action to be reinstated upon violation, ignition interlock required for one year from date of restriction.”

**QUESTION:** Can DWLS and Operating While Intoxicated be issued on a ticket?

**ANSWER:** Citations may be issued for a 93-day misdemeanor for 1<sup>st</sup> offense written under the Michigan Vehicle Code or a substantially corresponding local ordinance. 2<sup>nd</sup> and subsequent offenses carrying penalties over 93 days must be filed on a complaint and warrant.

**QUESTION:** What if the prosecutor chooses to charge 1<sup>st</sup> offense when there are prior convictions on the record?

**ANSWER:** This is the prosecutor’s prerogative. This would lesson the criminal penalties, but the license sanctions imposed by the Department of State will be based upon the driving record regardless of whether the defendant was convicted of 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> offense. The court will receive no notice from SOS of the license action it takes. The defendant will receive a notice of the suspension or restrictions imposed with an effective date.

**QUESTION:** Can a defendant be charged with both Operating While Intoxicated – Child Endangerment and Operating While Intoxicated?

**ANSWER:** No. Operating While Intoxicated is a lesser included offense of Operating While Intoxicated – Child Endangerment.

**QUESTION:** Can the prosecutor charge multiple counts for Operating While Intoxicated-Occupant Less Than 16?

**ANSWER:** Yes. There could be one count for each individual under 16 in the vehicle. The second count would be treated as same incident.

**QUESTION:** If the owner wants to sell the vehicle to a non-family member, can the new owner get a metal plate?

**ANSWER:** Yes.

**QUESTION:** What if prints do not accompany the complaint from the police or prosecutor to the court?

**ANSWER:** The court would be obligated to order fingerprints taken prior to sentencing. The prints would have to be updated with the appropriate CTN from the county prosecutor, in order to match to the judgment of sentence, dismissal/acquittal, or nolle prosequi sent to MSP-Central Records.

Convictions under local ordinance for offenses with penalties up to 93 days must also be reported. This must be done by submitting the original fingerprint card with a copy of the judgment of sentence, dismissal/acquittal, or nolle prosequi form. Locations using LIVE SCAN submission of fingerprints should coordinate electronic submission of conviction information using the appropriate CTN or other local tracking number.

**QUESTION:** Does the court have any obligation to initiate communication with the vehicle owner if different than the defendant?

**ANSWER:** No. One way this could be addressed would be if the owner filed a motion regarding possible order of immobilization. Each court might want to determine how the judge will make this determination.

**QUESTION:** Would a motion from an innocent owner regarding immobilization be filed as a new case or part of the criminal case?

**ANSWER:** This is a secondary action on an existing case and should be filed in the criminal case. There would be no motion fees.

**QUESTION:** Does the officer have to list all co-owners on the citation? How will the court know whether a person is a co-owner?

**ANSWER:** Ownership of a vehicle is not information required on a citation. If a co-owner has a motion before the court they should provide proof of co-ownership to the court. If at arraignment or plea the defendant indicates s/he is not an owner, the court could run the vehicle registration record to determine ownership if it has not already received registration information from law enforcement.

**QUESTION:** How does the owner find out when the adjudication date will be if s/he is not the defendant?

**ANSWER:** It is up to the owner to communicate with the defendant to be aware of important court dates.

**QUESTION:** What if the prosecutor declines to authorize a complaint? How does the defendant get a new metal plate?

**ANSWER:** The prosecutor has the obligation to notify law enforcement that charges will not be issued. The prosecutor and law enforcement will have to work out an agreement as to which agency has the responsibility to notify the defendant s/he may apply for a new metal plate. It might be helpful for courts to determine which agency will handle this.

**QUESTION:** Does the court have any responsibility to assist an owner in obtaining a new plate if the prosecutor declines to authorize charges?

**ANSWER:** The court has no responsibility to do this. The owner should contact the appropriate prosecutor or law enforcement.

**QUESTION:** Will a fee be required to get a new plate if charges are not filed?

**ANSWER:** The Department of State will charge a \$5.00 replacement fee for a new plate regardless of whether the defendant was ever charged, was convicted, or the case was dismissed.

**QUESTION:** Are there any new time guidelines for adjudication of these cases?

**ANSWER:** There are no new time guidelines for adjudication. The new offense of Child Endangerment was added to the offenses for which time guidelines on processing are required.

**QUESTION:** What procedures will the court have to modify to implement these new laws?

**ANSWER:** Many of these violations become 93-day misdemeanors. In addition, fingerprints are required, as well as reporting to MSP Central Records at disposition. MCR 6.610(D) has been amended effective 10-1-99, eliminating the requirement for a Court Appointed Attorney for 93-day offenses.

If a paper plate was issued, in addition to alcohol offenses, other offenses require two abstracts – one at disposition (conviction, dismissal, nolle, etc.) and a second “audit” abstract at sentencing. A variety of offenses could qualify for this procedure based upon whether or not the metal plate was confiscated. Court clerks will need to know which cases this requirement applies to; the court may have to implement some internal “flag” mechanism to identify these cases based upon the issuance of the paper plate.

**QUESTION:** What does the court need to know in order to inform defendants at arraignment of possible sanctions? How will the court get this information?

**ANSWER:** The court’s obligation is to advise the defendant that any license sanctions will be imposed by the Department of State based upon the master driving record. It is not the court’s responsibility to determine the extent of those sanctions. If the court wishes to interpret the driving record and so advise the defendant, the court will have to determine locally how it will obtain a current driving record, understanding that the record may be modified between arraignment and adjudication.

**QUESTION:** What if the prosecutor fails to advise the court of defendant’s eligibility for vehicle immobilization or forfeiture?

**ANSWER:** The court will be aware of mandatory immobilization when the court receives notice of issuance of a paper plate. If no information regarding the paper plate is received, the court would not know, unless it determined this from its own review of the defendant's driving record. While the statute is silent on what happens if the prosecutor fails to provide notice, courts might draw an analogy from the notice requirements for habitual felony offenders, and hold that they are precluded from ordering immobilization or forfeiture.

**QUESTION:** How does the owner get a new metal plate after the case is adjudicated?

**ANSWER:** The court must provide the owner with an NOA (Notice of Adjudication) form. This is a combination form with the CORDL (Court Ordered Restricted Driver License). CORDLs are used on pre-October 1, 1999, alcohol cases and on all drug cases because the court continues to impose license sanctions on these cases. On all new cases, except for drug cases, license sanctions are imposed by the Secretary of State. The CORDL form is used as a NOA on cases occurring after October 1<sup>st</sup> when a paper plate was issued. The owner may take this form to a SOS branch office to get a new metal plate.

**QUESTION:** What if the owner isn't in court? Should the court give the NOA to the defendant?

**ANSWER:** Each court must determine its own policy based upon whether the court knows whom the owner is. The court might decide to hold the NOA at the court until the owner requests it or the court might mail it to the owner if an address is available. The court can also mail or FAX the NOA to SOS.

**QUESTION:** What if the court submits its abstracts electronically? How does it get an NOA?

**ANSWER:** This process will work the same way as it currently does for a CORDL. Depending upon how the court's software works, it might be produced at the court, or the clerk might have to type it. SOS will accept a "print screen" if it displays all the necessary information. In this case SOS would prefer to have this form sealed with the court's seal.

**QUESTION:** Should the NOA be sealed by the court if produced on 8 x 11 paper?

**ANSWER:** Yes.

**QUESTION:** Does the trial box on the NOA tell the branch office of a dismissal/acquittal so they can clear the title hold also?

**ANSWER:** The NOA does not clear the title. It only clears the paper plate. The sentencing information clears the title if not immobilized.

**QUESTION:** On a multi-count case, if a paper plate is issued, should each abstractable count include the VIN information as well as the immobilization information, if needed? What if they start dismissing certain counts? Basically, how do we handle a multi-count C&W with these extra fields?

**ANSWER:** An NOA should not be issued until all counts from a case are adjudicated. If one count is dismissed and it is the first abstract received, it will clear the VIN hold. When

the conviction abstract is received it will reinstate the VIN. This will result in a warning edit notation to the court on the abstract error list. It is possible that a defendant will go to a SOS branch office to obtain a metal plate after the first abstract has cleared the VIN hold.

**QUESTION:** How do we handle the NOA and abstract if the issuance of a paper plate is related to a multi-charge ticket?

**ANSWER:** The process in the court is the same regardless of whether the charge is filed in the court on a ticket or a complaint and warrant. A NOA should not be issued until all tickets from an incident are adjudicated. If one ticket is dismissed and it is the first abstract received, it will clear the VIN hold. When a conviction abstract is received on a same-incident violation it will reinstate the VIN. This will result in a warning edit notation to the court on the abstract error list. It is possible that a defendant will go to a SOS branch office to obtain a metal plate after the first abstract has cleared the VIN hold.

**QUESTION:** What reporting requirements does the court have for these offenses?

**ANSWER:** The court has three reporting requirements:

- (a.) The court must report the adjudication of every case for which a paper plate was issued to the Secretary of State. This is not only Operating While Intoxicated and DWLS, but any offense occurring while suspended if the driving record indicates plate confiscation eligibility. The adjudication abstract includes guilty pleas as well as dismissals and nolle prosequi. If convicted, the adjudication abstract must contain the VIN and make of the vehicle.
- (b.) The court must report the sentencing of every case for which a paper plate was issued and the defendant was convicted. The sentencing abstract (audit abstract) must indicate a “Yes” or “No” regarding whether immobilization was ordered. If “Yes”, the start date and number of days ordered immobilized are required.
- (c.) The court must report the adjudication of every case with a penalty of over 92 days, and every case where immobilization was ordered to the Michigan State Police Central Records. The Judgment of Sentence, Dismissal/Acquittal, or Nolle Prosequi may be used.

**QUESTION:** How are convictions for Attempts” handled?

**ANSWER:** All convictions for “Attempts” are reported to DOS and MSP. DOS and courts will treat “Attempts” as if completed; the offender will receive the same licensing actions, points, and punishment.

**QUESTION:** Will license restrictions be imposed by the court at plea?

**ANSWER:** The court will continue to impose specific license restrictions (work location/hours, etc.) on all Drug Crimes and OUIL/OWI cases which occurred prior to 10/1/99. The court will not impose specific license restrictions on any case, with the exception of Drug Crimes, occurring on or after 10/1/99; these will be imposed by SOS.

Alcohol Offenses occurring on or after 10/1/99: The court will submit adjudication information, but no revocation, suspension, or restriction information. These sanctions will be imposed by DOS based upon the driving record. If restrictions are granted they will be the broadest available under Statute. Defendant must carry valid proof of destination.

Drug Offenses occurring on or after 10/1/99: The court will enter adjudication information and submit after sentencing, including the revocation, suspension, or restriction length, without specific restrictions (work location/hours, school, etc.). If restrictions are granted they will be the broadest available under Statute. Defendant must carry valid proof of destination.

Alcohol and Drug Offenses occurring prior to 10/1/99: The court will process under current method.

**QUESTION:** Does the court still order screening and assessment on alcohol offenses?

**ANSWER:** Yes.

**QUESTION:** What if the defendant fails to appear?

**ANSWER:** All offenses in the Michigan Vehicle Code are now eligible for an FAC/FCJ suspension.

**QUESTION:** What if the defendant does not appear for an extended period of time and the innocent owner wants to get a new metal plate?

**ANSWER:** There is no provision in the current Statute addressing this issue. The registration can be renewed each time it expires. There is no direction in the Statute as to the court or SOS having authority to allow the innocent owner to eventually get a metal plate without the underlying criminal case being adjudicated.

**QUESTION:** When abstracting after sentencing, must the court report anything if no immobilization is ordered?

**ANSWER:** Yes. The field on the sentencing abstract (sometimes referred to as the Alcohol Audit) is a mandatory field if a paper plate was issued. It must be completed either Y (yes) or N (no).

**QUESTION:** If a paper plate was issued because the driving record shows multiple suspensions and the charge presented to the court is for DWLS 1<sup>st</sup>, can a Magistrate order immobilization in the sentence based upon the driving record?

**ANSWER:** MCL 257.904e states that “a court shall order” rather than “a judge”. Therefore, it appears a magistrate having authority to sentence on DWLS 1<sup>st</sup> offenses could order immobilization.

**QUESTION:** If the defendant is sentenced to jail, can the car be immobilized during that time?

**ANSWER:** No. Immobilization must follow incarceration. See MCL 257.904d(6).

**QUESTION:** What if the defendant is released early – how can the court predict when release will occur?

**ANSWER:** The court will have to take into consideration the jail population in his or her area, as well as policies regarding good-time early release. In some circumstances the defendant may have a window of time during which s/he can legally drive the vehicle – that period between jail release and the date the vehicle is ordered immobilized.

**QUESTION:** If the defendant is on a tether program, when does immobilization occur?

**ANSWER:** In the case of a tether program in lieu of incarceration, the immobilization could occur immediately.

**QUESTION:** Can immobilization be ordered at plea?

**ANSWER:** Per MCL 257.625 and 257.904 immobilization is ordered at sentencing. The court could advise defendant at plea that immobilization will be ordered at sentencing to give him/her time to make arrangements.

**QUESTION:** Can the owner sell the vehicle before sentencing? If they do, what does the court report regarding immobilization?

**ANSWER:** There is nothing to prohibit the sale of the vehicle before sentencing. If this occurs, no immobilization is ordered or reported.

**QUESTION:** What if the owner advised the court at sentencing that s/he intends to sell the vehicle? Should the court order immobilization?

**ANSWER:** The court should order immobilization and report it to SOS. Depending upon the timing of the sale versus the receipt of the sentencing abstract at SOS, various steps might occur.

- If the car is sold before the court submits its sentencing abstract by FAX, the court should note on the form that the car has been sold. SOS will handle it manually and immobilization information will be added to the Judges' Audit.
- If the abstract is submitted before the sale occurs, SOS will allow the transfer of the title, which will clear the immobilization order against the vehicle. Immobilization information will be added to the Judges' Audit.
- If the sale and transfer of title occur after sentencing but before the abstract is submitted, the immobilization order on the sentencing abstract will kick out and SOS will manually put the immobilization information into the Judges' Audit data base. The vehicle will be unaffected, as the title will already be transferred.

**QUESTION:** Can a vehicle other than the one driven during the violation be ordered immobilized?

**ANSWER:** The statute states that vehicle immobilization means requiring the motor vehicle involved in the violation immobilized in a manner provided in Section 904e. See MCL 257.904d(3)(4) and (8)(b).

**QUESTION:** Can a person immobilize their own vehicle such as placing their own CLUB on the vehicle?

**ANSWER:** The court would most likely require some proof that the immobilization method could not be circumvented and the vehicle could not be driven under these circumstances.

**QUESTION:** How does the court initiate immobilization, and how does the court determine that it occurred?

**ANSWER:** SCAO form MC-267, Order for Vehicle Immobilization, is designed for the purpose of ordering immobilization. It contains a certification section by which the defendant can provide proof of compliance with the order.

**QUESTION:** Where are vehicles immobilized and who pays for it?

**ANSWER:** There are various methods by which this can be accomplished. Any technology that locks the ignition, wheels, or steering of the vehicle, or otherwise prevents any person from operating the vehicle, or that prevents the defendant from operating the vehicle may be used. The court may order the vehicle stored at a location and in a manner it considers appropriate. Costs for immobilization may be ordered paid by the defendant.

The court might wish to provide defendants with a specific place to have a vehicle immobilized, such as an impound lot, or it might wish to provide a list of choices and require the order to be returned completed as verification. Local circumstances and availability of locked storage lots or other means of immobilization will impact these decisions.

**QUESTION:** How much time does the defendant have to prove the vehicle is immobilized? What if the defendant fails to provide proof of immobilization?

**ANSWER:** Each court must determine how much time to provide for immobilization, and how it will proceed if no proof is provided. The court could set a specific date by which immobilization must occur, or if facilities are available, make it immediate (other than when incarcerated). There could be an Order to Show Cause, with a subsequent Order for Vehicle Impoundment (MC-254) and/or a Bench Warrant for failure to comply with a court order or a condition of probation.

**QUESTION:** What if the vehicle is immobilized on a date different from that reported on the sentencing abstract to SOS?

**ANSWER:** If the sentencing or “audit” abstract has already been submitted, a corrected abstract may be submitted with the new start date. If a corrected abstract is not sent, a person legally driving the vehicle after it is released from immobilization might get arrested.

**QUESTION:** How can an innocent owner address the court regarding possible immobilization?

**ANSWER:** One way could be that the innocent owner files a motion to prove they did not knowingly allow the offender to operate. Each court should determine at what stage it wants

to decide this issue; before sentencing or at sentencing and how the judge will make that determination.

**QUESTION:** Will SOS do an override on immobilization?

**ANSWER:** No.

**QUESTION:** If the court orders reimbursement of the costs for emergency services, who determines the amount, who collects it, and how is it disbursed?

**ANSWER:** Determining the amount will require some information from the various emergency response agencies and might be facilitated by the prosecutor and/or probation department during the pre-sentence investigation. Each court should determine how it will handle this process in coordination with county and local prosecuting officials, law enforcement, and other agencies.

The assessments will be collected and disbursed by the court. If one or more of the agencies is a state agency, the money will be transmitted to the state. This will require identifying which agency is the recipient. Disbursement in District Courts for local agencies can be accomplished in a fashion similar to current distribution of ordinance fines and costs using the general depository account. Disbursement in Circuit Court can be accomplished through the County Treasurer and will require identifying which agency is the recipient.

**QUESTION:** Does the court still order community service, rehabilitation, or substance abuse treatment?

**ANSWER:** Yes. Substance abuse treatment is mandatory for a 2<sup>nd</sup> or subsequent offense conviction. See MCL 257.625b(5).

**QUESTION:** Is there any mandatory jail time?

**ANSWER:** For a 2<sup>nd</sup> offense Operating While Intoxicated/Operating While Visibly Impaired within 7 years, there is either a minimum of 5 days in jail or a minimum 30 days community service. For a 3<sup>rd</sup> offense within 10 years, there is either a mandatory 1 year jail, or with probation, a mandatory 30 days jail.

**QUESTION:** May the court order ignition interlock?

**ANSWER:** This provision was moved from the sentencing provisions in MCL 257.625b(8) to 257.322(6). Under this section the Driver License Appeal Hearing Officer must require an ignition interlock device when issuing a restricted license, and must notify the defendant's employer of this restriction. The court could make ignition interlock a condition of probation.

**QUESTION:** How are suspensions and restrictions applied to the driving record, and how is the driver notified?

**ANSWER:** Upon receipt of the conviction abstract, the Department of State will impose the minimum license sanctions. Restrictions will be the broadest possible under the Statute, and the defendant will be required to carry documentation proving the reason for driving (such as

letter from employer, school schedule, doctor's appointment card, etc.). The driver is notified by an Order of Action from DOS.

**QUESTION:** How is an Order allowing transfer of title to a family member obtained? Is a hearing required? Who prepares the Order?

**ANSWER:** Each Circuit Court should determine its procedure for this. A hearing will probably be required. There is no SCAO form for such an order.

**QUESTION:** How is vehicle forfeiture handled?

**ANSWER:** This procedure is outlined in MCL 257.625n, and is initiated by the prosecutor. There are several SCAO forms; MC-66, MC-68, and Mc-69. If the court orders forfeiture, the unit of government that seized the vehicle sells it and disposes of the proceeds according to Statute.

**QUESTION:** How does a non-defendant owner obtain an NOA?

**ANSWER:** The procedure is developed at each court. Possibilities: 1) mail a copy if you have the owner's address, 2) tell the defendant to give the NOA to the owner, 3) wait until the owner contacts the court, or 4) send the NOA to SOS by mail or FAX.

**QUESTION:** What if the defendant fails to comply with any of the court's sentence?

**ANSWER:** All offenses in the Michigan Vehicle Code are eligible for FAC/FCJ suspension.

**QUESTION:** Who monitors the defendant during immobilization to make sure s/he does not purchase or lease another vehicle?

**ANSWER:** This cannot be monitored by DOS. The Department will, however, monitor for no transfer to a family member. It is a crime to purchase or lease a vehicle subject to prosecution.

**QUESTION:** If a defendant has been denied the ability to register a vehicle, who will check to see if s/he tries to purchase or lease another vehicle during the denial period?

**ANSWER:** Under registration denial, effective June 1, 2000, it is a crime for a person to purchase or lease another vehicle. Any person suspended or revoked for a 3<sup>rd</sup> drunk driving or 4<sup>th</sup> mandatory additional suspension/revocation is denied the ability to transfer a vehicle to a family member without a court order. Department of State prohibits the registration of a new vehicle in that person's name.

**QUESTION:** What happens to a leased vehicle during an immobilization period if the lease agreement expires? Is the dealer able to re-lease?

**ANSWER:** The company can re-lease or sell the vehicle to someone else, but would probably need to go to the court to get an order releasing the immobilization order. The defendant could not purchase or lease a new vehicle while still under an immobilization period. As of June 1, 2000, they fall under registration denial.

**QUESTION:** Is there one query to SOS that will get both the driver's license status and the registration status?

**ANSWER:** No. A 35;1; 35;2; 42;7; or 42;8; will produce a driver status. A registration status is obtained by an 11; or 13; for a plate, or a 53;1; VIN check.

**QUESTION:** If there is a drunk driving case that resulted in the issuance of a paper plate, how does the defendant get his photo license back as well as the owner get a metal plate, if the case is DISMISSED/ACQUITTED or reduced to a non-alcohol charge?

**ANSWER:** The NOA form will accomplish both tasks. If the defendant is not the owner, it may be necessary to provide the owner with a copy of the NOA, or instruct the owner and defendant to go to the SOS Branch Office together-the driver to get his/her photo license, and the owner to get a new metal plate.

**QUESTION:** How long is the extension of the 625g permit from the receipt of the abstract to allow the defendant to get the restricted license mailed to him/her?

**ANSWER:** The Department of State delays imposition of suspension/restriction for 12 days, to give time for the notice to reach the defendant.

**QUESTION:** Some drivers do not have current addresses on file with Department of State. Therefore, some mailings may be returned and not reach drivers. Can this be remedied?

**ANSWER:** If defendants want to receive restricted driver licenses it will be important for them to update their address with DOS. Court staff may wish to inform people of the importance of keeping their address current. A person who fails to report a change of his/her residence address is responsible for a civil infraction. MCL 257.315(3).

**QUESTION:** Will specific restrictions (work hours, etc.) still appear on the driving record for drug offenses pre- and post- 10/1/99 and pre- 10/1/99 alcohol convictions?

**ANSWER:** Only for old law cases. Any offense (drug or alcohol) occurring on or after 10/1/99 will receive "generic" restrictions.

**QUESTION:** Will there be a mixture of some convictions with specific restrictions (drug offenses) and some with generic restrictions (DOS ordered)?

**ANSWER:** The only mixture will be between old law and new law cases.

**QUESTION:** If the court ordered the restrictions (drug offenses), will the defendant have to carry proof of restrictions for that offense?

**ANSWER:** Yes, if issued on cases occurring prior to 10/1/99. No, if issued on cases occurring on or after 10/1/99. The defendant is required to carry proof of destination.

**QUESTION:** Would a CORDL be produced for a Drug Offense conviction on an offense occurring on or after 10/1/99?

**ANSWER:** If the court orders a hard suspension followed by restrictions, no CORDL would be required; DOS would send out a restricted license when the driver becomes eligible. If only a hard suspension is ordered and the driver later receives a restricted license from the court, the court could issue a CORDL without specific restrictions to be carried until DOS issues the actual restricted license.

**QUESTION:** What forms are required for implementation of Repeat Offender laws?

**ANSWER:** The SCAO created several forms and modified others. For a period of time the courts will need both the old and new versions of some of the forms, depending upon the offense date of the case it is processing.

New Forms:

CC-268 Order Regarding Driver License Restoration Appeal-for arrests after 10/1/99  
CC-269 Order Regarding Driver License Restoration Appeal-for arrests from 1/1/92 through 9/30/99  
MC-267 Order for Vehicle Immobilization

Revised Forms:

DC-213 Advice of Rights  
DC-251 Misdemeanor Register of Actions  
MC-210 Affidavit and Order for Restricted Driver License-for arrests prior to 10/1/99 or Drug Crimes  
MC-219 Judgment of Sentence, Commitment to Jail  
MC-254 Order for Vehicle Impoundment

**QUESTION:** If the court orders reimbursement of the costs for emergency services, who determines the amount, who collects it, and how is it disbursed?

**ANSWER:** Determining the amount will require some information from the various emergency response agencies and might be facilitated by the prosecutor and/or probation department during the pre-sentence investigation. Each court should determine how it will handle this process in coordination with county and local prosecuting officials, law enforcement, and other agencies.

The assessments will be collected and disbursed by the court. If one or more of the agencies is a state agency, the money will be transmitted to the state. This could require identifying which agency is the recipient. Disbursement in district courts for local agencies can be accomplished in a fashion similar to current distribution of ordinance fines and costs. Disbursement in Circuit Court can be accomplished through the County Treasurer and will require identifying which agency is the recipient.

**QUESTION:** Is the judge/magistrate bar number required on the audit abstract for immobilization on non-alcohol (DWLS and other repeat offender) convictions?

**ANSWER:** A bar number should be sent for all judges and attorney-magistrates. Statistics from abstracts received without a bar number will appear on the last page of the Drunk Driving Audit Report.

**QUESTION:** Which of the new offenses go on the Drunk Driving Audit?

**ANSWER:** The new violations of Child Endangerment and Driving With Any Presence of Schedule 1 Drugs or Cocaine are added to the Drunk Driving Audit. In addition, immobilization statistics without the related convictions are added for all repeat-offender violations such as DWLS.

**QUESTION:** What case type codes are used for new offenses?

**ANSWER:**

SD Child Endangerment  
ST Allow Suspended/Revoked Person to Operate – Misdemeanor  
FY Allow Suspended/Revoked Person to Operate – Felony  
FY Allow Intoxicated Person to Operate – Felony  
ST Malicious Destruction (Turfing) – Misdemeanor  
FY DWLS – Felony  
ST Ignition Interlock Device Violation  
ST Immobilization Violations  
ST Obtaining Vehicle to Circumvent Immobilization  
ST Transfer to Avoid Forfeiture  
ST Transfer to Person Not Subject to Use Tax  
ST Application for New Registration by Holder of Assigned Plates

**QUESTION:** Which of the new offenses get a crime-victim fee assessed?

**ANSWER:** All violations of 257.625 or 257.904 or corresponding local ordinances are crime-victim fee assessable.

**QUESTION:** Do the new offenses get a 7-day Notice of Non-compliance or 14-day Notice prior to FAC/FCJ?

**ANSWER:** All the new offenses get a 14-day Notice prior to FAC/FCJ. This occurs 28 days after the person fails to comply with the judgment or fails to appear in court.

**QUESTION:** How do suspensions imposed under 257.511 (financial responsibility, nonpayment of judgment) interface with the repeat offender?

**ANSWER:** Based upon the language in MCL 257.904, DOS doesn't differentiate between types of suspensions. If this is the first time a person's license is suspended, they could be charged with DWLS and if convicted, the conviction could later be used to enhance. If they are already suspended when DOS receives the financial responsibility suspension, it does not result in a mandatory additional suspension under 257.904(10), (11), or (12), so it is not used for enhancement purposes later.

## **REGISTRATION DENIAL**

**QUESTION:** How will leasing companies like Vault, Ford Credit, Chrysler Credit, etc., be impacted by new multiple owner requirements?

**ANSWER:** Leasing companies must provide a name, driver license/personal identification number, as well as a resident address for all lessees of a vehicle. Michigan law does not require that an individual have a driver license/personal identification number to purchase a vehicle. Such a purchaser shall provide a mailing address as well as a resident address as part of the title application process.

**QUESTION:** What if an applicant does not want his full legal name on the title?

**ANSWER:** Use of an applicant's full legal name as it appears on his driver license, for original, foreign, and transfer title transactions, is a Department of State policy.

**QUESTION:** When there are multiple owners on a title application, who actually receives the title?

**ANSWER:** Unless a Special Mailer is completed, the Department will mail the title to the first listed owner's address.

**QUESTION:** Why is watercraft an exception to registration denial?

**ANSWER:** Watercraft actually falls under another section of law and is not covered by the Michigan Vehicle Code.

**QUESTION:** Where in the law would I find registration denial?

**ANSWER:** MCL 257.219(1)(d): Authority to refuse issuance of registration.  
MCL 257.233(4) and (6): Registration denial crimes.

**QUESTION:** Why is the Department implementing registration denial?

**ANSWER:** Merely suspending driver licenses has not kept habitual violators off Michigan's roads. Registration denial follows plate confiscation, immobilization, and ignition interlock as the most recent initiative to limit offenders' access to vehicles.

**QUESTION:** What if the worst offenders drive anyway?

**ANSWER:** A driver who is subject to registration denial is also currently suspended or revoked. If caught driving, the offender will be arrested, subjecting himself/herself to possible jail time and lengthier driving privilege penalties. The "drive anyway" offender remains subject to plate confiscation and increasingly longer periods of immobilization.

**QUESTION:** I have been granted restricted driving privileges by a hearing officer, including the ignition interlock device restriction, but I am under registration denial. How do I get a car on which to put the ignition interlock device?

**ANSWER:** Registration denial ends when any kind of driving privilege is granted. It may take a few days for the record to reflect the eligibility. Your Order/Authorization granting restricted driving privileges allows you to register a vehicle.

**QUESTION:** I have been granted restricted driving privileges by a hearing officer, including the ignition interlock device restriction, but I am under registration denial. I cannot get insurance without a license and I cannot get a license without an ignition interlock device certification of installation. I cannot register a vehicle on which to install an ignition interlock device without insurance. What do I do?

**ANSWER:** Registration denial ends when any kind of driving privilege is granted. It may take a few days for the record to reflect the eligibility. Your Order/Authorization granting restricted driving privileges allows you to register a vehicle and should aid you in getting insurance.

## **BREATH ALCOHOL I GITION INTERLOCK DEVICE (BAID)**

**QUESTION:** How do I get a car on which to put the ignition interlock device?

**ANSWER:** I am under Registration Denial:

- Reg/Denial ends when any kind of driving privileges are granted. It may take a few days for the record to reflect his. If, after showing your Order/Authorization to a Secretary of State (SOS) branch office they still say you are Reg/Denied, have them call Driver Assessment and Appeal Division for assistance at 1-888-SOS-MICH (1-888-767-6424).

I cannot get insurance without a license:

- The Order Authorizing Driving Privileges should provide sufficient proof of your eligibility for driving privileges. An insurance provider is not required to issue insurance to you. You may need to check with more than one insurance provider until you find one who meets your needs.

I cannot get a vehicle without a license:

- The Order Authorizing Driving Privileges should provide sufficient proof of your eligibility for driving privileges. While you are not authorized to operate the new vehicle until you receive a restricted license, you are authorized to purchase a vehicle. A close friend or family member will need to drive the vehicle until you are licensed. If, after showing your Order/Authorization to the dealer you are still told you are not eligible to purchase the vehicle, you might wish to request that they call DAAD for assistance. 1-888-SOS-MICH (1-888-767-6424).

**QUESTION:** How do I get an ignition interlock device installed on my vehicle?

**ANSWER:** You must use a vendor certified by the State of Michigan. Each vendor is a private company. You might wish to call each vendor prior to choosing a vendor who will best meet your needs. For an up-to-date list of certified vendors, please visit our web site at [www.michigan.gov/sos](http://www.michigan.gov/sos) or call 1-888-SOS-MICH (1-888-767-6424).

**QUESTION:** Whom do I call if I have problems with the ignition interlock device?

**ANSWER:** Call the vendor's toll free number and follow their instructions. Do not call the place where it was installed or where you went for calibration unless the head office so instructs you. If you do not call the head office, the call may not be properly noted in their records, and may cause you problems down the road with violations. You should keep a record of the date and time of the call and with whom you spoke.

**QUESTION:** What if I cannot get through to the head office?

**ANSWER:** Your vendor should have instructed you on what to do in case of emergencies. You must follow their procedures or you may have a violation report submitted against you. Notify the head office as soon as possible about any problems and keep a record of the date and time you called and with whom you spoke.

**QUESTION:** Whom do I contact if I am having problems and my vendor is not helping me?

**ANSWER:** You may register a detailed written complaint through the Driver Assessment and Appeal Division (DAAD) by mail, PO Box 30196, Lansing, MI 48909-7696, or by FAX at (517) 335-2190.

**QUESTION:** Can another person drive my vehicle(s) equipped with an ignition interlock device?

**ANSWER:** Yes, however, they are required to use the device the same as you. If other people drive the vehicle, you should keep a log of driving activity as backup in case there are any problems and a violation is recorded. You are responsible for any violations that are recorded.

**QUESTION:** May I drive a work vehicle?

**ANSWER:** If your restrictions allow you to drive during work, yes, as long as the vehicle is equipped with an ignition interlock device. **NO EXCEPTIONS.**

- My job requires that I drive all different vehicles. You may only operate vehicles equipped with an ignition interlock device.
- I am a mechanic and I need to test drive the vehicles on which I work. You may only operate vehicles equipped with an ignition interlock device.
- I may only have to drive a certain vehicle once. You may only operate vehicles equipped with an ignition interlock device.
- If a valid driver's license is required, you **MUST** have an ignition interlock device installed on any vehicle you drive.

**QUESTION:** Does the ignition interlock device have to be installed to get a TIP and road test?

**ANSWER:** Yes.

**QUESTION:** Do I need an ignition interlock device to drive a forklift?

**ANSWER:** No, unless it is driven on a public road or requires a valid driver's license.

**QUESTION:** Do I need an ignition interlock device to drive on a military base or Indian reservation?

**ANSWER:** You must have an ignition interlock device installed if you are required to have a valid driver's license to drive on a military base or Indian reservation.

**QUESTION:** How do I know if I am eligible for reduced rates on the ignition interlock device?

**ANSWER:** Contact the vendors. They have the guidelines and it is their responsibility to interpret them. You are required by Statute to submit a copy of last year's State Income Tax return for verification.

**QUESTION:** What do the SOS branch offices do with an ignition interlock installation certificate?

**ANSWER:** Send it in with their daily reports to be filmed.

**QUESTION:** What happens if I choose to change vendors?

**ANSWER:** Fax or mail a copy of the new installation certificate to DAAD to verify proof that it was reinstalled within 7 days.

**QUESTION:** Will branches accept a faxed copy of the installation certificate?

**ANSWER:** They may only accept copies with an attached seal.

**QUESTION:** When does the one-year begin for the removal of the ignition interlock device?

**ANSWER:** The one-year begins the day you apply at any SOS branch office for your restricted license.

**QUESTION:** What happens if I get an Additional Denied and Revoked (904) action on my Master Driving Record (MDR) from an offense that occurred before my DAAD hearing after I apply for a restricted license?

**ANSWER:** You are now denied and revoked. You are eligible for a DAAD hearing after the minimum time period of the Additional has been served. 904's from arrests prior to 10/1/1999 may be appealed to Circuit Court for hardship relief (restrictions). 904's from arrests on or after 10/1/1999 may not be appealed to Circuit Court based on hardship.

**QUESTION:** Can the rolling retest portion of the ignition interlock be waived for special circumstances?

**ANSWER:** No.

**QUESTION:** Do you send out any notice to the employer of ignition interlock extensions or when it is no longer required?

**ANSWER:** No.

**QUESTION:** Does the SOS send out verification when I have completed my ignition interlock requirement?

**ANSWER:** No. It is up to you to show proof that you completed the ignition interlock requirement if such verification is requested by law enforcement.

**QUESTION:** Is failure to take a rolling retest a violation?

**ANSWER:** No, but if a rolling retest is not taken, it will either emit a warning light or a siren that could force the driver to shut down the vehicle.

**QUESTION:** Is a person who is Denied/Revoked for 1 Negligent Homicide required by law to use an ignition interlock device?

**ANSWER:** No.

**QUESTION:** Is a person who is Denied/Revoked for felonies not involving alcohol required by law to use an ignition interlock device?

**ANSWER:** No.

**QUESTION:** What is the definition of a start-up test failure?

**ANSWER:** After a recorded start-up test failure, a passing test is not recorded within 15 minutes.

**QUESTION:** How would you determine 3 start-up test failures?

**ANSWER:** The 3 start-up test failures must be completely separate incidents, with a minimum of an hour break between attempts.

**QUESTION:** What do I do if my vendor submits a violation, but I did not violate?

**ANSWER:**

- Contact your vendor. If the vendor agrees with you, the vendor may rescind the violation in writing.
- If it is for de-installation and you changed vendors, send your new installation certificate to DAAD with a letter of explanation.
- If the vendor will not rescind the violation, you may appeal:
  - Minor Violations – DAAD Administrative Rules do not permit appeals for minor violations.
  - Major Violations – You may mail or FAX a request for an appeal hearing within 14 days of the reinstatement. You are only appealing the reason for the reinstatement. Bring any documents or evidence you need to prove you did not violate.

**QUESTION:** What date do you use to determine if the appeal was filed within 14 days?

**ANSWER:** Postmark on the envelope.

**QUESTION:** When may I have the ignition interlock device removed from my vehicle if my restrictions do not say, “ignition interlock required for one year from date of restrictions?”

**ANSWER:** You may request a DAAD hearing after one year with your restricted license or at the end of any extensions, whichever is later, and the Hearing Officer will make the determination as to when you may have the ignition interlock device de-installed. You will still need to present a report from your vendor containing the same information as the final report.

## **ORV/SNOWMOBILE**

**QUESTION:** My driving privileges are suspended. May I still operate my snowmobile or ORV?

**ANSWER:** No.

**QUESTION:** If I am convicted of Operating While Intoxicated on my snowmobile or ORV on trails, what will happen to my license?

**ANSWER:** The Court may suspend your snowmobile or ORV operating privileges. The corresponding points (Operating While Intoxicated – 6 points; Operating While Impaired – 4 points) will appear on your master driving record. The points will count toward the limit for reexaminations.

**QUESTION:** If I receive the alcohol ticket while operating a snowmobile or ORV on a public roadway, what will happen to my license?

**ANSWER:** If convicted of Operating While Intoxicated or Impaired, the conviction is treated as though you were operating any motor vehicle. Your privileges are either suspended, restricted, or revoked/denied, depending on any prior convictions on the driving record.

## **GRADUATED DRIVER LICENSE**

**QUESTION:** What is graduated licensing?

**ANSWER:** Graduated licensing is a step-by-step process for issuing driver licenses to young people. It is designed to help young drivers gain the knowledge and skills they need to drive a motor vehicle safely.

This is accomplished by gradually increasing driving privileges as the young driver gains experience behind the wheel. According to the Insurance Institute for Highway Safety, at least forty states and the District of Columbia have some form of Graduated Driver Licensing systems. The goal of graduated licensing is to reduce crashes, serious injuries, and traffic-related fatalities involving new, young drivers.

**QUESTION:** Why do we need graduated licensing?

**ANSWER:** Evidence shows that young, inexperienced drivers pose serious safety threats not just to themselves, but also to other drivers who share the road. Statistics show teen drivers are over represented in at-fault crashes and fatal crashes. Young drivers lack experience and are often prone to risk-taking behavior.

The restrictions in place at each level of licensing are intended to help young drivers develop safe driving habits, while allowing them to gain knowledge, skills and experience.

**QUESTION:** When did graduated licensing go into effect?

**ANSWER:** Public Act 387 took effect on April 1, 1997.

**QUESTION:** Whom does the graduated licensing law affect?

**ANSWER:** The graduated licensing law affects the following:

- Teens and their parents.
- Teens who began a driver education course after March 31, 1997, are subject to the graduated licensing requirements. Additionally, everyone applying for an original license after March 31, 1997, is required to take a road test.

**QUESTION:** How are parents affected by graduated licensing?

**ANSWER:** Before a young driver can obtain driving privileges at Level 1, written approval from a parent or legal guardian is required.

A parent or legal guardian must certify that the young driver has accumulated at least 50 hours of behind the wheel experience before advancing to Level 2.

The young driver's parent, legal guardian, or responsible adult will be given an information packet that contains a Log Book to record behind the wheel experience.

Under the graduated licensing program, and until the young driver reaches age 18, a parent or guardian will be sent information by the Secretary of State about any violation of the graduated license law received by the young driver.

**QUESTION:** How does driver education differ under graduated licensing?

**ANSWER:** The curriculum was developed by the Michigan Department of Education and consists of two segments. Segment one must be completed before obtaining a Level 1 license and Segment two completed before the Level 2 license is issued.

**QUESTION:** How many levels of licensing are there and what do they require?

**ANSWER:** There are three licensing levels under the graduated license law. Here is what they require:

**To obtain a Level 1 license, teens must:**

- Be at least 14 years, 9 months.
- Complete Segment one of a driver education course approved by the Secretary of State, including six hours of on the road driving with an instructor.
- Pass a vision test and meet health standards set by the Secretary of State.
- Obtain written approval from a parent or legal guardian to obtain a Level 1 license.

**To obtain a Level 2 license, teens must:**

- Be at least age 16.
- Successfully complete six months of practice driving at Level 1.
- Complete Segment two of a driver education course approved by the Secretary of State.
- Have no convictions/civil infractions, license suspensions, or crashes during the 90-day period immediately prior to applying for Level 2 license.
- Complete a minimum of 50 hours of behind the wheel practice driving, including 10 hours nighttime driving, that is certified by a parent or legal guardian.
- Pass a road test conducted by an independent road-testing agency approved by the Secretary of State.

**To obtain a Level 3 license, teens must:**

- Be at least age 17.
- Hold a Level 2 license for six months.
- Complete 12 consecutive months of driving without a moving violation, an at-fault crash that resulted in a moving violation, a license suspension or a violation of the graduated license restrictions.
- The graduated licensing program ends for all young drivers when they reach age 18.

**QUESTION:** Who has to take a road test?

**ANSWER:** Anyone age 16 or older who obtains an original driver license after March 31, 1997, must take a road test. This includes anyone who has completed driver education on or before March 31, 1997.

**QUESTION:** Are there other restrictions when driving with a Level 1, Level 2 or Level 3 license?

**ANSWER:** Yes.

**Level 1** allows a young driver to operate a motor vehicle only when accompanied by either a licensed parent or licensed legal guardian, or a licensed driver over age 21 who has been designated by the parent or legal guardian.

**Level 2** allows teens to drive without supervision except from midnight to 5 a.m. Driving is only permitted from midnight to 5 a.m. if driving to and from employment or if driving with a parent, legal guardian or designated licensed driver over the age of 21.

**Level 3** offers full driving privileges with no restrictions.

**QUESTION:** Does the graduated license replace Michigan's probationary system for new drivers?

**ANSWER:** No. In fact, graduated licensing complements the probationary program to create a stronger program. Probation begins whenever a new driver receives an original license. Probation lasts for three years and until the driver has been violation and crash free for the last 10 months of the probationary period.

In addition to the requirements established by the graduated driver license program, drivers are also subject to the probationary license requirements. Both programs may result in an extension of probation or delayed advancement to the next licensing level.

**QUESTION:** What fees will be charged for a graduated license and road test?

**ANSWER:** The fee for an original operator's license is \$25. This fee will be collected at Level 2.

A separate fee will be charged for the road test. The amount of this fee will be determined by the independent agency conducting the test.