

**REQUEST FOR ACTION
Administrative Appeal Hearings**

**MICHIGAN DEPARTMENT OF STATE, DRIVER ASSESSMENT AND APPEAL DIVISION
CIRCUIT COURT UNIT, P.O. BOX 30196, LANSING, MI 48909-7696**

TO: Assistant Prosecuting Attorney/Assistant Attorney General

Petitioner:

Driver's License Number:

On behalf of the Secretary of State, please ensure the enclosed certified master driving record is entered in the record and please take action in accordance with the action checked below:

(Please also ensure that the final order includes all actions considered by the circuit court.)

- (1) The circuit court has no jurisdiction to review a district/trial court licensing sanction issued as part of a sentence for OUIL/UBAC or OWI. [MCL 257.323(5), MCL 257.625(10), MCL 257.625b(8)] Paulson v SOS, 154 Mich App 626 (1986); or if the circuit court is reviewing a departmental administrative action and a district/trial court sanction is still current, the circuit court should not order less than the district/trial court. Paulson v SOS, 154 Mich App 626 (1986). A trial court may not amend it's sentence to less than the minimum licensing sanction required by law. Dudley v SOS, Mich App (1994).
- (2) Habitual violators whose licenses are revoked under MCL 257.303(1)(e), (2)(c) and (d) may only appeal within the minimum period of revocation based upon a driving record. After the minimum, the appeal must be based upon a review of the Driver Assessment and Appeal Division hearing. A transcript is necessary. The standard of review 323(6) as follows:
- (6) In reviewing a determination resulting in a denial or revocation under '303(1)(d) or (e) or 303(2)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to '322 or the driving record created under '204a, and shall not grant relief pursuant to sub section (3). The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:
- (a) In violation of the Constitution of the United States, of the state constitution of 1963, or of a statute.
 - (b) In excess of the statutory authority or jurisdiction of the secretary of state.
 - (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
 - (d) Not supported by competent, material, and substantial evidence on the whole record.
 - (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
 - (f) Affected by other substantial and material error of law. MCL 257.323(6)

No Transcript Request

Transcript to Follow

Transcript Enclosed

- (3) The circuit court lacks jurisdiction to review the departmental remedial action of a denial for application of a commercial driver license (CDL). [MCL 257.323(8)], or a suspension. [MCL 257.319b] bases on hardship/equity. Only legal issues are appealable, such as whether a conviction is substantially corresponding to a MI offense.
- (4) This petitioner is a non-resident. The circuit court may not order SOS to issue a license [MCL 257.303(1)(l)]. The court may or may not be able to grant restricted or full Michigan privileges depending upon the reason for the under-lying action. The other state may not choose to issue a license if the Michigan license is restricted. Petitioner may appeal a denial in the other state.
- (5) The circuit court has no jurisdiction to review a FAC/FCJ suspension (MCL 257.312a) pursuant to section MCL 257.323(5).
- (6) While the MCL 257.904 additional sanction(s) are immediately eligible for circuit court review, the underlying section 303 revocation/denial is NOT. The petitioner must comply with (MCL 257.323(6). After considering the section 904 additional sanction(s) please ask the court to remand the section 303 revocation/denial to DAAD for a hearing after the minimum period of revocation has been served.
- (7) Other: "THE JUDGE HAS JURISDICTION IN THIS MATTER. HOWEVER BEFORE A COURT DECISION IS MADE, PLEASE MAKE THE COURT AWARE OF THE PETITIONER'S DRIVING INFRACTION AND THE REASONS FOR THE DRIVER LICENSE ACTIONS. THANK YOU."

257.66 Suspension [MSA 9.1866]

'66. "Suspension" means that the driver's license and privileges to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension ..."

257.52 Revocation [MSA 9.1852]

'52(1) "Revocation" means that the operator's or chauffeur's license and privilege to operate a motor vehicle on the public highways are terminated and not be renewed or restored, except that an application for a new license may be presented and acted upon by the secretary of state as provided in '303.

A revocation/denial continues until it is approved by DAAD or Circuit Court. The through date indicates when the driver is eligible for a hearing to rebut the habitual presumption