

DRIVING UNDER THE INFLUENCE
PENALTIES AND PROCESS
INFORMATION



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CRIMINAL CHARGE OF DUI

A person is guilty of the offense of driving under the influence if the State can prove beyond a reasonable doubt that:

(1) the person is driving **or** in actual physical control of a vehicle

and

(2)(a) the person is under the influence of alcoholic beverages, or any chemical substance, to the extent that the person's normal faculties are impaired;

or

(b) the person has a blood-alcohol level of 0.08

or

(c) the person has a breath-alcohol level of 0.08

Driver: any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

Actual Physical Control: a driver must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether they are actually operating the vehicle at the time.

Normal Faculties: include, but are not limited to: the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Penalties: please review the attached penalties mandated by Florida law.

DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles will suspend the driving privilege of a person who is driving or in actual physical control of a motor vehicle and who:

(1) has an unlawful blood-alcohol level **or** breath-alcohol level of 0.08 or higher;

or

(2) of a person who has refused to submit to a urine test **or** a test of his or her breath-alcohol or blood-alcohol level.

Suspension: 12 months for a refusal to submit to any test.
6 months for an unlawful breath-alcohol or blood-alcohol level.

Formal Review Hearing

The driver may request a formal review of the suspension by the Department of Motor Vehicles within 10 days after the date of issuance of the notice of suspension (citation).

The department must schedule a hearing to be held within 30 days after such request.

All requests for review must include:

- (a) The name, address, driver license number, and date of birth of the driver;
- (b) A statement of the date of suspension and the county where the driver received notice of suspension or disqualification of the driving privilege;
- (c) Copy of the notice of suspension/disqualification issued by the department.

Issues Under Review

In a formal review hearing, the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. The scope of the review shall be limited to the following issues:

(1) If the license was suspended for driving with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher:

- (a) Whether the law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances.
- (b) Whether the person had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher.

(2) If the license was suspended for refusal to submit to a breath, blood, or urine test, then the hearing officer will review:

- (a) Whether the law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances.
- (b) Whether the person refused to submit to any test after being requested to do so by a law enforcement officer.
- (c) Whether the person was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

Hearing Officer's Determination

If after review, the hearing officer determines that there is not sufficient cause to sustain the suspension, the officer can then invalidate the suspension. **Note:** Even if the hearing officer invalidates the suspension, this does not preclude the criminal prosecution of the DUI charge.

If the suspension is sustained by the hearing officer, then the suspension continues until all requirements necessary to be eligible to have your license reinstated have been met.

Temporary Permit

The temporary permit issued at the time of suspension expires at midnight of the 10th day following the date of the arrest.

Upon request for a formal review hearing, the Division of Driver Licenses will issue a driving permit for business purposes only. **Note:** This request must include a copy of the notice of suspension (citation). If the suspension is subsequently sustained by the hearing officer, then the permit is canceled.

BUSINESS PURPOSES ONLY LICENSE (a.k.a Hardship License)

A person with an unlawful alcohol level is not eligible for a hardship permit until 30 days have elapsed after the expiration of the last temporary permit issued.

For a first time refusal, a person is not eligible for a hardship permit until 90 days have elapsed after the expiration of the last temporary permit issued.

For a second refusal, a person is not eligible for a hardship license.

Note: DMV also requires proof of enrollment in a DUI course and may require the installation of an ignition interlock device before you can become eligible for a hardship permit.

Business Purposes Only: a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.

Ignition Interlock: is a device installed in a motor vehicle which prevents the ignition from starting unless the driver blows a breath sample into the device. If the alcohol concentration of the breath sample exceeds 0.05, the motor vehicle engine will not start.

A person convicted of DUI who applies to the Division of Driver Licenses for driver license reinstatement will be directed to an ignition interlock provider. If required, the ignition interlock device must be installed on the vehicle prior to receiving a license.

For more information, contact the Department of Highway Safety and Motor Vehicles:
www.hsmv.fl.us.

DUI COURSE LEVEL 1

Mandated per *FS 316.192(4)* and *316.193(5)*. The level of each DUI course is based upon the number of lifetime DUI/RD offenses.

The Level 1 course is designed for individuals who have been convicted of only one DUI.

Overview

Twelve hour educational course.

All students undergo a one hour psycho-social evaluation interview conducted by a certified DUI evaluator.

The course is taught by a State of Florida Certified DUI Instructor.

Teaching tools include lectures, class discussions, handouts, and videos.

Courses

Classes are available weekly: days, evenings and weekends.

Classes are located in Orange, Osceola, Seminole and Brevard counties.

Basic requirements needed to register are:

- (1) Court order, if there has been a conviction.
- (2) Arrest Affidavit or Traffic Crash Report (legible copies).
- (3) DUI Citation(s) (legible copies).
- (4) Breath / Blood Alcohol Level reading (BAL).
- (5) Driver's License Number.
- (6) Photo Identification.

Students may register prior to conviction. Registration normally takes at least 1 ½ hours.

Online registration is available at register.floridasafety.org.

For additional information, please call your local Florida Safety Council.

DUI - DRIVING UNDER THE INFLUENCE PENALTIES

(effective 7/1/02 except ignition interlock, which did not become effective until 7/1/03)

FELONY DUI - the following DUIs qualify for felony upgrade.

- 3rd offense with at least one prior conviction within 10 years. 316.193(2)(b)1
- 4th offense, regardless of dates of prior convictions. 316.193(2)(b)3
- Any DUI where defendant's driving causes or contributes to causing a crash

which results in death or serious bodily injury to the defendant or any other person involved in the crash. 316.193(3)

FINES

316.193(2)(a) - (b) and 316.193(4)(a)

	BAC under .20		Minor in car OR BAC .15 or Greater	
	<u>minimum</u>	<u>maximum</u>	<u>minimum</u>	<u>maximum</u>
1st offense	\$500	\$1000 *	\$1000	\$2000
2nd offense (regardless of date)	1000	2000	2000	4000
3rd offense (regardless of date)	2000	5000	Not less than 4000	

** DUI with Damage/Injury is a 1st degree misdemeanor carrying a maximum of \$1000 on first offense.*

Felony DUI

If upgraded to a felony, the minimum fine required is \$1000 and the maximum fine is \$5000. If qualified for felony but charged as a misdemeanor, minimum and maximum is same as 3rd offense listed above.

JAIL

316.193(2)(a) and 316.193(4)(b)

	BAC under .20		Minor in car OR BAC .15 or Greater	
	<u>minimum</u>	<u>maximum</u>	<u>minimum</u>	<u>maximum</u>
1st offense	0 days	6 months*	0 days	9 months*
2nd offense (outside of 5 years)	0 days	9 months	0 days	12 months
2nd offense (within 5 years)	10 days**	9 months	10 days**	12 months
3rd offense (outside 10 years)	Same as 1st or 2nd offense as applicable and maximum is 12 months.			

**DUI with Damage/Injury is a 1st degree misdemeanor which carries a max. of 1 yr in jail on first offenses*

***At least 48 hours of the mandatory jail time must be consecutive*

Felony

3rd offense with at least one prior conviction w/in 10 years of the current offense. If upgraded to felony, minimum jail is 30 days** and the maximum is 5 yrs prison. If charged as a misdemeanor, the minimum remains same and the maximum is 1 yr.

4th offense. If upgraded to felony, the minimum jail required is same as 2nd or 3rd offense, as applicable, and maximum is 5 yrs prison. If case is charged a misdemeanor, the minimum remains the same and the maximum is 1 year.

D.L. REVOCATION

322.28(2)

	<u>minimum</u>	<u>maximum</u>
1st offense	180 day revocation	1 year revocation
2nd offense outside of 5 years	180 day revocation	1 year revocation
2nd offense within 5 years	5 years revocation	permanent/lifetime revocation
3rd offense outside of 10 years	Same as 1st or 2nd offense, as applicable	

Felony

3rd offense with at least one prior conviction w/in 10 years of the current offense. Requires a minimum revocation of 10 years and a max. up to a permanent/lifetime revocation, regardless of whether charged as felony or misdemeanor.

4th offense requires a permanent/lifetime revocation, regardless of whether case is charged as a felony or misdemeanor.

IMMOBILIZATION¹

316.193(6)

	<u>minimum</u>	<u>maximum</u>
1st offense	10 days	1 year
2nd offense outside of 5 years	10 days	1 year
2nd offense within 5 years	30 days	1 year
3rd offense outside of 10 years	Same as 1st or 2nd offense as applicable	

Felony

3rd offense with at least one prior conviction w/in 10 years of the current offense. If upgraded to felony, the minimum immobilization requirement is 90 days and maximum is 5 years. If charged as a misdemeanor, the minimum remains the same and the maximum is 1 year.

4th offense requires a minimum of 2nd or 3rd offense immobilization, as applicable, regardless of whether charged as a felony or a misdemeanor. Maximum is 5 years for a felony and 1 year for a misdemeanor.

IGNITION INTERLOCK DEVICE (effective 7/1/03)

316.193(2)(a) - (b), 316.193(4)(c) and 316.1937

(Device that will prohibit the car from starting if the person's BAC registers over .05, and must be placed on all vehicles that are individually or jointly owned or leased and routinely operated by the DUI offender.)

Minor in car OR

	<u>minimum</u>	<u>BAC .20 or greater</u>	<u>maximum</u>
1st offense	0 days	0 days	6 months
2nd offense (regardless of date)	1 year	2 years	2 years
3rd offense (regardless of date)	2 years	2 years	2 years

Felony

Whether upgraded to felony or charged as a misdemeanor, the minimum ignition interlock

requirement is 2 years. If upgraded to felony, the maximum is 5 years, if charged as a misdemeanor, the maximum is 2 years.

OTHER PENALTIES

Adjudication: All offenders MUST be adjudicated guilty. 316.656

Probation: All offenders MUST be placed on reporting probation for at least 6 months. However, you may be given up to 12 months. 316.193(5) and 316.193(6)(a)

DUI School: All offenders MUST be ordered to complete a substance abuse course conducted by a DUI program licensed by the department which shall include a psychosocial evaluation of the offender. Any recommended counseling must be completed at the defendant's expense. Level I shall be imposed for all first offenders only and Level II for all repeat offenders. 316.193(5)

Community Service: First time offenders MUST be ordered to complete a minimum of 50 hours of community service. The hours may be bought out at a rate of \$10 per hour, however you should consider limiting the buyout to no more than half of the hours. 316.193(6)(a). (Also see FN1).

Court Costs: All offenders MUST pay court costs.

Victim Awareness Program: Although not statutorily required, all offenders SHOULD be ordered to pay costs of investigation.

No Alcohol: Although not statutorily required, all offenders MAY be ordered to refrain from possessing or consuming alcohol during the period of their probation.

Random Testing at Defendant's Expense: Although not statutorily required, all offenders MAY be ordered to undergo random drug and alcohol testing at the defendant's expense.

VT 7/22/03

¹ McGhee v. State, 847 So.2d 498 (4th DCA March 2003) Court ruled that the plain language of 316.193(6) requires that the penalties of community service and vehicle immobilization are mandatory ONLY for violations of 316.193(1). Since DUI Causing Property damage or Personal Injury falls under 316.193(3) rather than 316.193(1), those mandatory penalties do NOT apply to that offense. The Court pointed out that Section 316.193(5), by its terms applies to "any offender convicted of violating this section." In contrast, subsection (6) applies only to "any person convicted of a violation of subsection (1)."