

STATE OF FLORIDA
 DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
 DIVISION OF DRIVER LICENSES & BUREAU OF DRIVER EDUCATION & DUI PROGRAMS

Summary: 2008 FLORIDA DUI LAW AND ADMINISTRATIVE SUSPENSION LAW

1. **DUI (Driving Under the Influence of Alcoholic Beverages, Chemical Substances or Controlled Substances) 316.193, F.S.**
 Under Florida law, DUI is one offense, proved by impairment of normal faculties or unlawful blood alcohol or breath alcohol level of .08 or above. The penalties upon conviction are the same, regardless of the manner in which the offense is proven.
2. **FINE SCHEDULE 316.193(2)(a)-(b), F.S.**
 - A. **First Conviction:** Not less than \$500, or more than \$1,000.
 With Blood/Breath Alcohol Level (BAL) of .20 or higher (.15 or higher- Effective 10/01/2008) or minor in the vehicle: Not less than \$1,000, or more than \$2,000.
 - B. **Second Conviction:** Not less than \$1,000, or more than \$2,000.
 With BAL of .20 or higher (.15 or higher- Effective 10/01/2008) or minor in the vehicle: Not less than \$2,000, or more than \$4,000.
 - C. **Conviction for Third Offense More Than 10 Years from Second Conviction:** Not less than \$2,000, or more than \$5,000. With BAL of .20 or higher (.15 or higher- Effective 10/01/2008) or minor in the vehicle: Not less than \$4,000.
 - D. **Fourth or Subsequent Conviction:** Not less than \$2,000.
3. **COMMUNITY SERVICE 316.193 (6) (a)**
First Conviction: Mandatory 50 hours of community service or additional fine of \$10 for each hour of community service required.
4. **PROBATION 316.193(5)(6)**
 First conviction, total period of probation and incarceration may not exceed 1 year.
5. **IMPRISONMENT 316.193(2)(a)2, (4)(b), (6)(j), F.S.**
 At court's discretion, sentencing terms may be served in a residential substance abuse treatment program, credited toward term of imprisonment.
 - A. **First Conviction:** Not more than 6 months.
 With BAL of .20 or higher (.15 or higher- Effective 10/01/2008) or minor in the vehicle: Not more than 9 months.
 - B. **Second Conviction:** Not more than 9 months. With BAL of .20 or higher (.15 or higher- Effective 10/01/2008) or minor in the vehicle: Not more than 12 months. If second conviction within 5 years, mandatory imprisonment of at least 10 days. At least 48 hours of confinement must be consecutive.
 - C. **Third Conviction:** If third conviction for offense within 10 years of second conviction, mandatory imprisonment of at least 30 days. At least 48 hours of confinement must be consecutive. If third conviction for offense more than 10 years from second conviction, imprisonment for not more than 12 months.
 - D. **Fourth or Subsequent Conviction:** Not more than 5 years or as provided in 775.084 as habitual/violent offender.
6. **IMPOUNDMENT OR IMMOBILIZATION OF VEHICLE 316.193(6), F.S.**
 Unless the family of the defendant has no other transportation: First conviction = 10 days; second conviction within 5 years = 30 days; third conviction within 10 years = 90 days. Impoundment or immobilization must not occur concurrently with incarceration. The court may dismiss the order of impoundment of any vehicles that are owned by the defendant if they are operated solely by the employees of the defendant or any business owned by the defendant.
7. **MOTOR VEHICLE TAG REGISTRATION LAW 320.055:** Requires motor vehicle owners whose drivers license has been suspended for DUI to obtain a six-month registration as a condition of license reinstatement. These motor vehicle owners will be required to renew their registration every 6 months during a 3-year period that financial responsibility requirements apply.
8. **IGNITION INTERLOCK DEVICE 316.193, 316.1937, 322.16, and 322.2715, F.S.**
 - A. **First Conviction:** if court ordered. If BAL .20 or higher (.15 or higher- Effective 10/01/2008) or passenger under 18 years of age in the vehicle, mandatory for six (Effective 10/01/2008, continuous) months.
 - B. **Second Conviction:** Mandatory for at least one (Effective 10/01/2008, continuous) year. If BAL .20 or higher (.15 or higher- Effective 10/01/2008) or passenger under 18 years of age in the vehicle, mandatory for at least two (Effective 10/01/2008, continuous) years.
 - C. **Third Conviction:** Mandatory for at least two years (Effective 10/01/2008, continuous).
 - D. **DHSMV may administratively require it:** 1st DUI conviction if BAL .20 or higher (.15 or higher- Effective 10/01/2008) or passenger under 18 years of age in the vehicle, for 6 (Effective 10/01/2008, continuous) months. 2nd and 3rd conviction, same as "B" and "C" above.
 - E. **Third IID Violation:** Effective 10/01/2008 Treatment required and IID extended at least 1 continuous month up to the date treatment is completed.
9. **CONDITIONS FOR RELEASE OF PERSONS ARRESTED FOR DUI 316.193(9), F.S.**
 - A. The person is no longer under the influence and;
 - B. The person's normal faculties are no longer impaired;
 - C. The person's blood/breath alcohol level is lower than 0.05; or
 - D. Eight hours have elapsed from the time the person was arrested.
10. **DUI MISDEMEANOR CONVICTION: (Accident Involving Property Damage or Personal Injury) 316.193(3), F.S.**
 Any person who causes property damage or personal injury to another while driving under the influence is guilty of a First Degree Misdemeanor (not more than \$1,000 fine or 1 year imprisonment).
11. **DUI FELONY CONVICTION: (Repeat Offenders or Accidents Involving Serious Bodily Injury) 316.193(2), (3), F.S.**
 - A. Any person convicted of a third DUI offense within 10 years of a second DUI conviction or a fourth or subsequent DUI commits a Third Degree Felony (not more than \$5,000 fine and/or 5 years imprisonment).
 - B. Any person who causes serious bodily injury while driving under the influence is guilty of a Third Degree Felony (not more than \$5,000 fine and/or 5 years imprisonment, mandatory minimum of 2 years imprisonment) or if habitual/violent felony offender as provided in 775.084.
12. **MANSLAUGHTER AND VEHICULAR HOMICIDE 316.193(3), F.S.**
 - A. **DUI/Manslaughter:** Second Degree Felony (not more than \$10,000 fine and/or 15 years imprisonment, mandatory minimum 4 years imprisonment).
 - B. **DUI Manslaughter/Leaving the Scene:** A driver convicted of DUI Manslaughter who knew/should have known accident occurred; and failed to give information or render aid is guilty of a First Degree Felony (not more than \$10,000 fine and/or 30 years imprisonment).
 - C. **Vehicular Homicide:** Second Degree Felony (not more than \$10,000 fine and/or 15 years imprisonment).
 - D. **Vehicular Homicide/Leaving the Scene:** A driver convicted of vehicular homicide who left the scene of an accident is guilty of a First Degree Felony (not more than \$10,000 fine and/or 30 years imprisonment).
13. **DRIVER LICENSE REVOCATION PERIODS FOR DUI 322.271, F.S. and 322.28, F.S.**
 - A. **First Conviction:** Minimum 180 days revocation, maximum 1 year.
 - B. **Conviction for Second Offense Within 5 Years of First Conviction:** Minimum 5 years revocation. May be eligible for hardship reinstatement after 1 year. Other 2nd offenders same as "A" above.
 - C. **Conviction for Third Offense Within 10 Years of Second Conviction:** Minimum 10 years revocation. May be eligible for hardship reinstatement after 2 years. Other 3rd offenders same as "A" above.
 - D. **Fourth Conviction (Regardless of When Prior Convictions Occurred) or Murder with Motor Vehicle:** Mandatory permanent revocation. No hardship reinstatement.
 - E. **DUI Manslaughter:** Mandatory permanent revocation. If no prior DUI related convictions, may be eligible for hardship reinstatement after 5 years.
 - F. **Manslaughter, DUI Serious Bodily Injury, or Vehicular Homicide Convictions:** Minimum 3 year revocation. DUI Serious Bodily Injury having prior DUI conviction is same as "B-D" above.
14. **COMMERCIAL MOTOR VEHICLES (CMV) - ALCOHOL RELATED CONVICTIONS/DISQUALIFICATIONS 322.61, F.S.**
 - A. Persons convicted of driving a commercial motor vehicle with a blood alcohol level of .04 or above or refusing to submit to a test to determine the alcohol concentration while driving a commercial motor vehicle, driving a commercial motor vehicle while under the influence of alcohol or controlled substance, or driving a commercial motor vehicle while in possession of a controlled substance shall be disqualified from operating a commercial motor vehicle for a period of 1 year. This is in addition to any provisions of s. 316.193 for DUI convictions.
 - B. Second or subsequent conviction of any of the above offenses arising out of separate incidents will result in a permanent disqualification from operating a commercial motor vehicle.
 - C. There are no provisions for persons disqualified from operating a commercial motor vehicle to obtain a hardship (business or employment) license to operate a commercial motor vehicle.
15. **BUSINESS PURPOSES ONLY/EMPLOYMENT PURPOSES ONLY REINSTATEMENTS 322.271, F.S. and 322.28, F.S.**
 - A. **First Conviction:** Must complete DUI school; apply to department for hearing for possible hardship reinstatement. See 8A.
 - B. **Second Conviction (or more):** No hardship license except as provided below. Also, see 8B.
 - C. **Second Offense Within 5 Years of First Conviction:** (5 Year Revocation) May apply for hardship reinstatement hearing after one year. Must complete DUI school and remain in the DUI supervision program for the remainder of the revocation period (failure to report for counseling or treatment shall result in cancellation of the hardship license). Applicant may not have consumed any alcoholic beverage or controlled substance or driven a motor vehicle for 12 months prior to reinstatement. Ignition interlock required for one year as condition of hardship reinstatement; if BAL .20 or greater, then interlock required for two years 322.271(2)(d).
 - D. **Third Offense Within 10 Years of Second Conviction:** (10 Year Revocation) May apply for hardship reinstatement hearing after 2 years. Must complete DUI school and remain in the DUI supervision program for the remainder of the revocation period (failure to report for counseling or treatment shall result in the cancellation of the hardship license). Applicant may not have consumed any alcoholic beverage or controlled substance or driven a motor vehicle for 12 months prior to reinstatement. Ignition interlock required for two years as condition of hardship reinstatement 322.271(2)(d).

- E. DUI Manslaughter With No Prior DUI Related Conviction:** (Permanent Revocation): May be eligible for hardship reinstatement after 5 years have expired from date of revocation or expired from date of term of incarceration provided the following requirements have been met:
1. Has not been arrested for a drug-related offense for at least 5 years prior to the hearing;
 2. Has not driven a motor vehicle without a license for at least 5 years prior to the hearing;
 3. Has been alcohol and drug-free for at least 5 years prior to the hearing; and
 4. Must complete a DUI school and must be supervised under the DUI program for the remainder of the revocation period (failure to report for counseling or treatment shall result in cancellation of the hardship license). Ignition interlock required for two years as a condition of hardship license 322.271(2)(d).
- F. DUI Manslaughter with a separate DUI conviction:** (Permanent Revocation) No hardship license.
- G. Manslaughter, DUI Serious Bodily Injury, or Vehicular Homicide Convictions:** (3 Year Revocation): May immediately apply for hardship reinstatement hearing. Must complete DUI school.
- 16. DUI PROGRAM REQUIREMENTS 316.193, F.S., 322.271, F.S., 322.291, F.S.**
- A. First Conviction:** Must complete DUI program before hardship reinstatement. See 15A.
 - B. Second Conviction in 5 Years (5 Year Revocation) or Third Conviction for DUI Offense within 10 Years of Second Conviction (10 Year Revocation):** Customer must complete DUI program following conviction. See requirements in 15C and 15D respectively.
 - C. DUI Manslaughter With No Prior DUI Related Conviction: (Permanent Revocation):** Must complete DUI program before hardship reinstatement. See 15E.
 - D. Manslaughter, DUI Serious Bodily Injury, or Vehicular Homicide: (Minimum 3 year Revocation):** See 15G.
 - E. Customers Who Wait Until Revocation Period Expires:** Must enroll in DUI program. Failure to complete the program within 90 days after such reinstatement will result in cancellation of the license until the program is completed.
 - E. Reckless Driving:** If the court has reasonable cause to believe that the use of alcohol, chemical or controlled substances contributed to a violation of reckless driving, the person convicted of reckless driving must complete DUI program if ordered by the court.
 - F. Treatment:** Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation by a court appointed agency with access to the original evaluation 316.193(5), F.S.
- 17. CHEMICAL OR PHYSICAL TEST PROVISIONS 316.1932, F.S., 316.1933, F.S., 316.1934, F.S., 316.1939, F.S.**
- A. Refusal:** Refusal to submit to a breath, urine, or blood test is admissible as evidence in DUI criminal proceedings. Second or subsequent refusal is a misdemeanor of the first degree.
 - B. Driver License Suspension Periods:** First refusal, suspended for 1 year. Second or subsequent refusals, suspended for 18 months.
 - C. Commercial Driver License Disqualification Periods:** First refusal in a commercial motor vehicle, disqualified permanently. No hardship reinstatement permitted.
 - D. Forceful Withdrawal of Blood:** If necessary, blood may be withdrawn in DUI cases involving serious bodily injury or death by authorized medical personnel with the use of reasonable force by the arresting officer, even if the driver refuses.
 - E. Unconscious:** Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition shall be deemed not to have withdrawn his consent to such test. A blood test may be administered whether or not such person is told that his failure to submit to such a blood test will result in the suspension of his privilege to operate a motor vehicle.
 - F. Portable Alcohol Breath Testing Devices:** Authorized by s. 322.2616, F.S., for persons under the age of 21. Reading is admissible as evidence in any administrative hearing conducted under s. 322.2616, F.S.
- 18. ADJUDICATION AND SENTENCING 316.656, F.S., 322.2615, F.S.**
- Penalty to be Imposed by Court:** Judges are prohibited from deviating from the administrative suspension/revocation periods mandated by statute. The courts are prohibited from withholding adjudication in DUI cases; or from reducing a DUI charge if the defendant's blood alcohol was .20 or greater.
- 19. DRIVING WHILE LICENSE SUSPENDED OR REVOKED 322.34, F.S.**
- Any person whose driver license/privilege is suspended for Driving with an Unlawful Alcohol Level, or revoked for DUI, DUI Manslaughter or Vehicular Homicide, or for any other offense ordered by the court and who causes death or serious bodily injury to another person by operating a motor vehicle in a careless or negligent manner is guilty of a 3rd degree felony, punishable by both imprisonment of not more than 5 years, a fine not to exceed \$5,000, or both.
- 20. ADMINISTRATIVE SUSPENSION OF PERSONS UNDER THE AGE OF 21 FOR DRIVING WITH AN ALCOHOL LEVEL .02 OR ABOVE:** Section 322.2616, F.S., authorizes law enforcement officers having probable cause to believe that a motor vehicle is being driven by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any alcohol level may lawfully detain this person and may request them to submit to a test to determine the alcohol level. This violation is neither a traffic infraction nor a criminal offense, nor does being detained under this statute constitute an arrest.
- A. First Suspension for Persons Under the Age of 21 With An Alcohol Level .02 or above:** 6 months.
Second or Subsequent Suspensions : 1 year.
 - B. First Suspension for Refusal to Submit to Breath Test:** 1 year.
Second or Subsequent Suspensions for Refusal: 18 months.
 - C. Suspension:** The suspension is effective immediately. If the breath or blood alcohol level is .05 or higher the suspension shall remain in effect until completion of a substance abuse evaluation and course. The officer will issue the driver a temporary permit, effective 12 hours after issuance, which is valid for 10 days, provided the driver is otherwise eligible.
- 21. ADMINISTRATIVE SUSPENSION LAW 322.2615, F.S., 316.193, F.S., 316.1932, F.S.**
- A. First Suspension for Driving With an Unlawful Alcohol Level (.08 or above):** 6 months.
Second or Subsequent Suspensions for Driving With an Unlawful Alcohol Level (.08 or above): 1 year.
 - B. First Suspension for Refusal to Submit to Breath, Urine or Blood Test:** 1 year.
Second or Subsequent Suspensions for Refusal: 18 months.
 - C. Suspension:** The suspension is effective immediately. The officer will issue the driver a temporary permit which is valid for 10 days from the date of arrest, provided the driver is otherwise eligible.
- 22. ADMINISTRATIVE DISQUALIFICATION LAW 322.64, F.S.**
- A. First Disqualification for Driving a Commercial Motor Vehicle With an Unlawful Blood Alcohol Level (.08 or above):** 6 months disqualification.
Second or Subsequent Disqualification of Driving a Commercial Motor Vehicle With an Unlawful Alcohol Level (.08 or above): 1 year disqualification.
 - B. First Disqualification for Refusal to Submit to Breath, Urine or Blood Test Arising from the Operation of a Commercial Motor Vehicle:** 1 year disqualification.
Second or Subsequent Disqualification for Refusal to Submit to Breath, Urine, or Blood Test Arising from the Operation of a Commercial Motor Vehicle: permanently disqualified.
 - C. Disqualification:** The disqualification is effective immediately upon refusal of the breath, urine or blood test or determination that the driver has a blood alcohol level of .08 or above, while operating or in actual physical control of a commercial motor vehicle. The officer will issue the driver a temporary permit which is valid for 10 days from the date of arrest or disqualification, provided the driver is otherwise eligible. However, the permit does not authorize the operation of a commercial motor vehicle for the first 24 hours of disqualification.
- 23. REVIEW HEARINGS FOR ADMINISTRATIVE SUSPENSION AND DISQUALIFICATION**
- Sections 322.2615 and 322.64, F.S., authorize the Department of Highway Safety and Motor Vehicles upon the request of the driver to conduct formal and informal reviews for the purpose of sustaining, amending or invalidating administrative suspensions and disqualifications. The decisions of the department shall not be considered in any trial for a violation of s. 316.193, nor shall any written statement submitted by a person in his request for review be admissible into evidence against him in any such trial. A Driving with an Unlawful Blood or Breath Alcohol Level (DUBAL) administrative suspension will be invalidated if the individual is found not guilty on or after 7/1/2005 of the underlying violation of s. 316.193, F.S.
- A. Business or Employment Reinstatement:**
 - 1. Suspension - Driving With an Unlawful Alcohol Level of .08 or Above or Refusal:** Must show proof of enrollment in DUI school and apply for an administrative hearing for possible hardship reinstatement. For unlawful alcohol level, must serve 30 days without driver license or permit prior to eligibility for hardship reinstatement. For first refusal, must serve 90 days without driver license or permit prior to eligibility for hardship reinstatement. No hardship reinstatement for two or more refusals.
 - 2. Suspension - Persons Under Age of 21 Driving With an Alcohol Level of .02 or Above:** Must complete a Traffic Law and Substance Abuse Education course before hardship reinstatement. .05 or higher, must complete DUI program prior to eligibility for hardship reinstatement. Must serve 30 days without driver license or permit prior to eligibility for hardship reinstatement.
 - B. Hardship License Prohibited:**
 1. Florida law prohibits any hardship reinstatement upon 2nd or subsequent suspension for test refusal or if a driver has been convicted of 316.193, F.S., (DUI) two or more times. Except as provided in paragraph 15(c)(d)
 2. Persons disqualified from operating a commercial motor vehicle cannot obtain a hardship license to operate a commercial motor vehicle.

Disclaimer: This summary was prepared by the Department of Highway Safety and Motor Vehicles and should be used as a reference only. Interested parties should refer to the full text of the law before drawing legal conclusions.