

28.1 DRIVING UNDER THE INFLUENCE

§ 316.193(1), Fla. Stat.

To prove the crime of Driving Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) drove [or was in actual physical control of] a vehicle.**
- 2. While driving [or in actual physical control of] the vehicle, (defendant)**

Give 2a or 2b or both as applicable.

- a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.**
- b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].**

Give if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence, you must also determine whether the State has proven beyond a reasonable doubt whether:

- a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.**
- b. the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the Driving Under the Influence.**

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

“Vehicle” is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway [, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934(1), Fla. Stat.

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.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

Give if applicable. The option of “on a vehicle” pertains to vehicles such as motorcycles and bicycles.

Actual physical control of a vehicle means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01(2), Fla. Stat.

Alcoholic beverages are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111(1), Fla. Stat.*

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**
2. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

It is not necessary to instruct on the “prima facie evidence of impairment” in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence if at the time of the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

Lesser Included Offense

DRIVING UNDER THE INFLUENCE — 316.193(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

A misdemeanor instruction was adopted in 1981 as part of Standard Jury Instructions in Misdemeanor Cases. In 1992, a similar instruction was adopted for Florida Standard Jury Instructions in Criminal Cases. That instruction was amended in 1995 and 1998; both instructions were merged into a revised instruction in 2000, which was amended in 2009 [6 So. 3d 574], 2016 [192 So. 3d 1190], 2019 [262 So. 3d 59], and on October 2, 2020.