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## **Driving Under the Influence of Alcohol Mandatory Minimum Penalties in Florida**

If you were arrested for or recently pled guilty to driving while under the influence of alcohol in Florida, there are certain penalties that are required by law that you should be aware of. Florida Statute 316.193 in subsection (1) outlines what the crime of driving under the influence (DUI) is and in subsection (2) outlines the penalties if convicted of the crime of DUI. The purposes of this article are to list and explain the penalties in subsection (2) and does not address the substantive elements of committing the crime of DUI.

### FIRST TIME DUI PENALTIES WITHOUT ENHANCEMENTS

For a first offense of DUI without enhancements (enhancements will be discussed in later sections of this article), the following penalties would or may be imposed.

1. The court must impose a minimum \$500 fine. The court may impose up to a \$1000 fine but may not impose more than a \$1000 fine for a first conviction of DUI without enhancements. Florida Statute 316.193(2)(a)1a (2015).

2. The court may impose up to six months in jail but no jail time is required by statute. For a first offense without enhancements, the court may not impose more than six months in jail. Florida Statute 316.193(2)(a)2a (2015).

3. No ignition interlock device is required but the court may impose one for up to six months if your breath-alcohol level was .08 or higher. Florida Statute 316.193(2)(c) (2015). An ignition interlock device is a device that is installed in your car. This device requires you to blow into it and measures the alcohol in your system. With one installed, your car will not start if you have any alcohol in your system at all. The ignition interlock device may not be ordered for longer than six months.

4. The court must place you on reporting probation. Florida Statute 316.193(5) (2015). During that probation you must complete certain mandatory special conditions which are also part of the minimum first time DUI penalties.

5. The court must impose a substance abuse course approved by the Florida Department of highway safety and motor vehicles. This course must also include a psychosocial evaluation. The course supervisor may refer you for further counseling which will also be ordered by the court. However, you may fight the need for further counseling but will have to obtain a second psychosocial evaluation that finds that you do not need further counseling. Florida Statute 316.193(5) (2015). This course is often referred to as DUI School. If you fail to complete this course and any recommended counseling your license will be suspended regardless of any other hardships, suspensions or revocations that you may or may not have.

6. The court must impose fifty (50) hours of community service work hours. The court may allow you to buy out your work hours at the rate of ten (\$10) dollars per hour. In other words, the court may allow you to pay a fine of \$500 in lieu of completing fifty (50) community service work hours. The court must first make a finding that actually completing the work hours would be an undue hardship either due to your geographic location or due to your employment responsibilities. Florida Statute 316.193(6)(a) (2015).



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7. Unless certain exceptions apply, the court must also impose a ten day impoundment or immobilization of your registered car or the car you were driving in when you were arrested. Florida Statute 316.193(6)(a) (2015). The impoundment or immobilization of your car must be run consecutively to any time you spend in jail. In other words the impoundment cannot begin until after you are released from jail. There are four exceptions to the impoundment requirement. A. The car being driven was stolen at the time of the offense or was sold subsequent to the offense. Florida Statute 316.193(6)(e) and (f) (2015). B. The car to be impounded is your family's only means of public or private transportation. Florida Statute 316.193(6)(g) (2015). C. The car is a business car that is operated solely by employees. Florida Statute 316.193(6)(h) (2015). Finally, D. you voluntarily and at your own expense place an ignition interlock device on your car in lieu of impoundment.

8. The court must suspend your driver's license for a period of at least 180 days (six months) and may suspend it for up to one year. Florida Statute 322.28 (2)(a)1 (2015). Note that this suspension is effective from the date of conviction and not the date of arrest. There are other statutes that govern suspension of your driving privilege upon arrest for DUI and those suspension can in some cases tack on or add to the total amount of time that your license will be suspended. It is important that you speak to a lawyer to help you understand this complicated administrative process.

9. Most courts will also order you to complete a Victim Impact Panel offered by Mother's Against Drunk Drivers although this is not statutorily required.

10. Finally there will be mandatory court costs imposed as part of the sanctions. These may vary somewhat from county to county or courtroom to courtroom but will typically be in \$300-\$500 range. These court costs are in addition to the fine mentioned above.

#### FIRST TIME DUI PENALTIES WITH ENHANCEMENTS

In addition to the penalties described above, certain additional or enhanced penalties apply in the following circumstances for a first time DUI conviction.

1. If during the course of the DUI you cause property damage or non serious injury to a person, you are guilty of a misdemeanor of the first degree.
2. If during the course of the DUI you cause serious bodily injury to a person, you are guilty of a third degree felony.
3. If during the course of the DUI you cause the death of a person, you are guilty of a second degree felony. If you cause a death of a person and leave the scene of the accident, you are guilty of a first degree felony.
  - a. If you are convicted of DUI manslaughter there is a mandatory minimum prison sentence of four years.
  - b. There is also a mandatory lifetime revocation of your driving privilege if you are convicted of DUI manslaughter.
4. If at the time of the DUI, you had a breath or blood alcohol level of .15 or higher or had a minor child in the car with you, the following enhanced penalties will apply.
  - a. A minimum fine of \$1000 and up to a maximum fine not to exceed \$2000.
  - b. The court may order incarceration for up to nine (9) months.



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5. If your blood or breath-alcohol exceeded .15 or higher, the court must order an ignition interlock device on your car for not less than six months for a first offense.

## SECOND TIME DUI PENALTIES WITHOUT ENHANCEMENTS

For a second offense—or conviction—of DUI, the following penalties would or may be imposed.

1. The court must impose a minimum \$1000 fine. The court may impose up to a \$2000 fine but may not impose more than a \$2000 fine for a second conviction of DUI. Florida Statute 316.193(2)(a)1b (2015).
2. The court must impose ten days in jail if your prior conviction for DUI was five years or less in time prior to your current conviction. Florida Statute 316.193(6)(b) (2015). The court may impose up to nine months in jail. No jail time is required if your previous conviction occurred more than five years ago. Florida Statute 316.193(2)(a)2b (2015).
3. The court must order you to install an ignition interlock device on your car for a period of one year. Florida Statute 316.193(2)(a)3 (2015).
4. For a second offense that occurred within five years of a previous DUI conviction, the court will impose a mandatory 30 day impoundment or immobilization of your car. The same exceptions that are listed above apply to this impoundment as well. The thirty day impoundment does not apply to convictions that occur more than five years after your first conviction for DUI.
5. A second substance abuse course will also be ordered. This second course is much more likely to require additional counseling and is often longer and more involved than the initial course for a first time conviction. This course is often referred to as DUI School level 2.
6. Your driver's license will be suspended or revoked for a period of five years for a second conviction occurring less than five years after your last conviction for DUI. Please note too that DUI is considered a major traffic violation for purposes of suspending your license as a habitual traffic offender and therefore prior convictions for driving on a suspended license with convictions for DUI may result in your license being suspended or revoked for five years as a habitual traffic offender. If you one or more convictions for driving with a suspended license please speak to an attorney before entering a plea to an additional charge of either DUI or driving while license suspended to help you understand the consequences of being designated a habitual traffic offender.

## SECOND TIME DUI PENALTIES WITH ENHANCEMENTS

In addition to the penalties listed above the following enhancements may also apply in your case for a second conviction of DUI.

1. If at the time of the DUI, you had a breath or blood alcohol level of .15 or higher or had a minor child in the car with you, the following enhanced penalties will apply.
  - a. A minimum fine of \$2000 and up to a maximum fine not to exceed \$4000. Florida Statute 316.193(4)(a).
  - b. The court may order incarceration for up to twelve (12) months. Florida Statute 316.193(4)(b).



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2. If your blood or breath-alcohol exceeded .15 or higher, the court must order an ignition interlock device on your car for not less than two years for a second offense.

#### THIRD TIME DUI PENALTIES

For a third conviction of DUI, the following penalties will or may be imposed in your case.

1. For a third conviction of DUI within ten years of any most recent conviction for DUI, you commit a felony of the third degree punishable by up to a maximum of five years in prison. Additionally, the court will order an ignition interlock device installed on your car for a minimum period of two years. The installation of the ignition interlock device cannot begin until your privilege to drive is permanently or provisionally reinstated.
2. Any third conviction for DUI that occurs more than ten years after the most recent prior conviction for DUI, is punishable as misdemeanor with the following minimum mandatory penalties.
  - a. A minimum fine of \$2000 up to a maximum fine of \$5000.
  - b. Incarceration in jail for up to 12 months.
  - c. The installation of an ignition interlock device on your car for a minimum of 2 years.
3. For a third conviction that occurs within ten years of the most recent prior conviction for DUI, your driving privilege will be suspended for ten years.

#### FOURTH TIME DUI PENALTIES

A fourth conviction for DUI is always treated as a third degree felony punishable by a maximum of five (5) years in prison. There is also a minimum fine of at least \$2000. The court may at his or her discretion impose any or all of the penalties described above. There is also a lifetime suspension or revocation of your driving privilege.

As you can see from the above list of penalties, DUI is a very serious crime and no plea to DUI should be entered into lightly or without first discussing all of your options with an experience DUI attorney. Even a plea to a first time DUI can have long term significant consequences and can and will be used against you in subsequent prosecutions for DUI. Please consult an attorney before making any plea decision. This article is for informational purposes only and is not intended as legal advice nor should it replace the services and advice of an experience and licensed attorney.