

**28.11 DRIVING [WHILE [LICENSE] [DRIVING PRIVILEGE] SUSPENDED,
REVOKED OR CANCELED] [OR] [UNDER SUSPENSION OR REVOCATION
EQUIVALENT STATUS] WITH KNOWLEDGE**

§ 322.34(2), Fla. Stat.

To prove the crime of Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) drove a motor vehicle upon a highway in this state.

Give as applicable.

2. At that time,

a. [his] [her] [license] [driving privilege] was [suspended] [revoked] [canceled].

b. [he] [she] was under suspension or revocation equivalent status.

Give as applicable.

3. At that time, (defendant) knew that

a. [his] [her] [license] [driving privilege] was [suspended] [revoked] [canceled].

b. [he] [she] was under suspension or revocation equivalent status.

Whether (defendant) knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status] is a question to be determined by you from the evidence.

Give as applicable. See § 322.251(1), (2), and § 322.34(2),(3),(4), Fla. Stat.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was given by personal delivery is proof that such notice was given.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was deposited in United States mail, first class, postage prepaid, addressed to the licensee at [his] [her] last known mailing address furnished to the department, is proof that such notice was sent.

If you find that (defendant) had been previously cited for driving [while license [suspended] [revoked] [canceled] and [his] [her] license had not been reinstated, you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation].

If you find that (defendant) admitted to knowing of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status], you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status].

If you find that (defendant) had received a traffic citation that contained a provision notifying (defendant) that [his] [her] license [had been suspended, revoked, or canceled] [was under suspension or revocation equivalent status], you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status].

Do not give if the suspension was for failure to pay a traffic fine or for a financial responsibility violation. See § 322.34(2) and § 322.251(1), (2), Fla. Stat.

If you find that (defendant) had received a [judgment] [order] rendered by [a court] [an adjudicatory body] which contained a provision notifying (defendant) that [his] [her] license had been [suspended] [revoked] [canceled], you may conclude that (defendant) knew of the [suspension] [revocation] [cancellation].

If you find that the records of the Department of Highway Safety and Motor Vehicles include a [judgment] [order] rendered by [a court] [an adjudicatory body] that contains a provision notifying (defendant) that [his] [her] license [had been [suspended] [revoked] [canceled]] [was under suspension or revocation equivalent status], you may conclude that (defendant) knew [his] [her] license was [suspended] [revoked] [canceled] [under suspension or revocation equivalent status]. You may accept or reject the inference depending upon the circumstances of the crime and the facts presented at trial.

§ 322.01, Fla. Stat.

“Drive” means to operate [or be in actual physical control of] a motor vehicle in any place open to the general public for purposes of vehicular traffic.

§ 322.01, Fla. Stat. Some of these terms (such as “vehicle” and “electric bicycle”) have their own statutory definitions, which should be given if necessary.

“Motor vehicle” means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

§ 322.01, Fla. Stat.; State v. Tucker, 761 So. 2d 1248 (Fla. 2d DCA 2000).

“Highway” means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic. [A privately owned parking lot, that is open to public use by vehicles, is considered to be a highway.]

§ 322.251, Fla. Stat.

“Notice” means personal delivery or deposit in the United States mail, first class, postage prepaid, addressed to the defendant at [his] [her] last known address furnished to the Department of Highway Safety and Motor Vehicles. Mailing by the department shall constitute notification.

§ 322.01, Fla. Stat.

“Suspension or revocation equivalent status” is a designation by the Florida Department of Highway Safety and Motor Vehicles for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

“Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.

“Revoked” means the privilege to drive a motor vehicle has been terminated.

“Canceled” means that a license has been declared void and terminated.

The option of “on a motor vehicle” pertains to motor vehicles such as motorcycles and mopeds.

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

See the Comment section below regarding recidivism issues that do not require any finding other than the fact of a prior conviction.

Give if applicable in a bifurcated proceeding. § 322.34(2)(c), Fla. Stat.

A third or subsequent conviction is a first degree misdemeanor and requires a minimum sentence of 10 days in jail. However, a third or subsequent conviction becomes a third degree felony if the current alleged violation or the most recent prior violation of § 322.34(2), Fla. Stat., are related to and resulted from a violation of an enumerated crime.

Now that you have found the defendant guilty of Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status], you must make two further findings.

First, you must determine whether the State proved beyond a reasonable doubt that the defendant has two prior convictions for Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status]. A “conviction” means a determination of guilt that was the result of a plea or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered.

Second, you must determine whether the State proved beyond a reasonable doubt that the current case or the most recent conviction are related to Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status] resulting from a violation of [Driving Under the Influence] [Refusal to Submit to a Urine, Breath-Alcohol, or Blood Alcohol test] [a traffic crime that caused death or serious bodily injury] [Fleeing or Eluding].

Lesser Included Offenses

DRIVING WHILE LICENSE SUSPENDED, REVOKED OR CANCELED OR DRIVING UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS, WITH KNOWLEDGE — 322.34(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
No Valid Driver's License		322.03	28.9
	Attempt	777.04(1)	5.1

Comments

This instruction should not be used for people who are alleged to have driven a motor vehicle while designated as a habitual traffic offender. For habitual traffic offenders, use instruction 28.11(a).

A person driving a moped upon a highway requires a valid driver license. *Soto v. State*, 711 So. 2d 1275 (Fla. 4th DCA 1998).

Pursuant to § 322.251(1), Florida Statutes, failure to receive the mailed order shall not affect or stay the effective date or term of the cancellation, suspension, or revocation of the defendant's driving privilege.

§ 322.34(2), Fla. Stat., is bumped up from a second degree misdemeanor to a first degree misdemeanor if there were one prior conviction. As of June 2025, a withhold of adjudication qualifies as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), with one exception. Under Fla. R. Traf. Ct. 6.560 and *Raulerson*, a withhold of adjudication that was obtained pursuant to § 318.14(10), Fla. Stat., does not qualify as a conviction

Although there is no caselaw on point, it is possible that the existence of a prior conviction can be proven to the trial judge at sentencing as a recidivist factor and not as an element of the crime that must be proven to the jury, based on *State v. Haddix*, 668 So.2d 1064 (Fla. 4th DCA 1996) and because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If the defendant has two or more prior convictions, § 322.34(2)(b)2., Fla. Stat., remains a first degree misdemeanor, but carries a mandatory minimum sentence of 10 days in jail. In that circumstance, unless a court determines the existence of the prior convictions is an element, it is unclear if a jury finding regarding the existence of a prior conviction would be needed for the judge to impose the mandatory jail sentence because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If the court determines, however, that a jury finding is required, then it would be error to inform the jury of prior convictions. Therefore, if the charging document contains an allegation of prior convictions, do not read that allegation and do not send

the charging document into the jury room. If the defendant is found guilty, the historical fact of previous convictions would then be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000). However, an exception to the foregoing may occur when a prior conviction is necessary to prove the knowledge requirement in element 3 above of the current suspension.

This instruction was adopted in 1981 and amended in 2007 [958 So. 2d 361], 2013 [131 So. 3d 692], 2017 [231 So. 3d 384], on April 1, 2020, on October 2, 2020, and on June 27, 2025.