

28.9 NO VALID DRIVER LICENSE

§ 322.03, Fla. Stat.

To prove the crime of No Valid Driver License, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) drove a motor vehicle upon a highway in this state.**
- 2. At the time, [he] [she] did not have a valid driver license recognized by the Department of Highway Safety and Motor Vehicles of the State of Florida.**

§ 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].

“Valid driver license” means a driver license recognized by the Department of Highway Safety and Motor Vehicles that has not expired, been suspended, revoked, or canceled, or is not in “suspension or revocation equivalent status.”

§ 322.01, Fla. Stat.

“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.

§ 322.03, Fla. Stat.

“Expired” means the license was not renewed on or before the expiration date and more than 6 months have passed since the expiration date.

§ 322.01, Fla. Stat.

“Suspended” means the privilege to drive a motor vehicle has been temporarily withdrawn.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

“Suspension or revocation equivalent status” is a designation 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.

The option of “on a vehicle” pertains to a vehicle such as a motorcycle.

“Actual physical control” of a motor 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.

Lesser Included Offense

NO VALID DRIVER LICENSE — 322.03			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

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

A special instruction will be needed for violations of § 322.03 Fla. Stat. in cases where the driver license was issued by another state exclusively to undocumented immigrants who were unable to prove lawful presence in the United States when the license was issued. See § 322.033, Fla. Stat.

§ 322.03(1)(b), Fla. Stat., is bumped up from a second degree misdemeanor to a first degree misdemeanor if there were one prior conviction. A withhold of adjudication may qualify as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), and § 322.01(11), Fla. Stat., although there was no case law directly on point as of June 2025. However, pursuant to 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 may not be 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, § 322.03(1)(b), 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 a court determines, however, that a jury finding is required, 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).

This instruction was adopted in 1981 and amended in 2007 [958 So. 2d 361], 2013 [131 So. 3d 692], on April 1, 2020, on October 2, 2020, on December 15, 2023, and on June 27, 2025.