

**ARTICLE 333**  
**Driving Under the Influence; Reckless Driving**

**333.01 Driving under the influence.**  
**333.02 Reckless driving.**

**333.03 Hazardous driving.**  
**333.99 Penalty.**

**CROSS REFERENCES**

See sectional histories for similar State law  
 Authority to prohibit driving under the influence -  
     see W. Va. Code 8-12-5(21)  
 Compliance with State law - see W. Va. Code 17C-5-11a  
 Implied consent - see W. Va. Code 17C-5A

**333.01 DRIVING UNDER THE INFLUENCE.**

- (a) Any person who:
- (1) Drives a vehicle in this Municipality while:
    - A. He is under the influence of alcohol, or
    - B. He is under the influence of any controlled substance, or
    - C. He is under the influence of any other drug, or
    - D. He is under the combined influence of alcohol and any controlled substance or any other drug, or
    - E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and
  - (2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, is guilty of a misdemeanor, and shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000).
- (b) Any person who:
- (1) Drives a vehicle in this Municipality while:
    - A. He is under the influence of alcohol, or
    - B. He is under the influence of any controlled substance, or
    - C. He is under the influence of any other drug, or
    - D. He is under the combined influence of alcohol and any controlled substance or any other drug, or
    - E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and

- (2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).
- (c) Any person who:
- (1) Drives a vehicle in this Municipality while:
    - A. He is under the influence of alcohol, or
    - B. He is under the influence of any controlled substance, or
    - C. He is under the influence of any other drug, or
    - D. He is under the combined influence of alcohol and any controlled substance or any other drug, or
    - E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight;
  - (2) Is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (d) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this Municipality, is guilty of a misdemeanor, and shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (e) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this Municipality by any other person who is:
    - A. Under the influence of alcohol, or
    - B. Under the influence of any controlled substance, or
    - C. Under the influence of any other drug, or
    - D. Under the combined influence of alcohol and any controlled substance or any other drug, or
    - E. Has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight;
  - (2) Is guilty of a misdemeanor and shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (f) Any person who knowingly permits his or her vehicle to be driven in this Municipality by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor, and shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(g) Any person under the age of twenty-one years who drives a vehicle in this Municipality while he or she has an alcohol concentration in his or her blood of two hundredths of one percent (0.02%) or more, by weight, but less than ten hundredths of one percent (0.10%), by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in West Virginia Code 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(h) Any person who:

- (1) Drives a vehicle in this Municipality while:
  - A. He is under the influence of alcohol; or
  - B. He is under the influence of any controlled substance; or
  - C. He is under the influence of any other drug; or
  - D. He is under the combined influence of alcohol and any controlled substance or any other drug; or
  - E. He has an alcohol concentration in his or her blood of ten hundredths of one percent (0.10%) or more, by weight; and
- (2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor, and, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).

(i) A person violating any provision of subsection (a), (b), (c), (d) (e), (f) or (h) hereof shall, for the second offense under this section, be guilty of a misdemeanor, and shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

(j) A person violating any provision of subsection (a), (b), (c), (d), (e), (f) or (h) hereof shall, for the third or any subsequent offense under this section, be guilty of a felony and charged under West Virginia Code 17C-5-2.

(k) For purposes of subsections (i) and (j) hereof relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

- (1) Any conviction under the provisions of subsection (a), (b), (c), (d) or (e) of the prior enactment of this section for an offense which occurred on or after September 1, 1981, and prior to the effective date of this section;
- (2) Any conviction under the provisions of subsection (a) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding September 1, 1981;
- (3) Any conviction under a municipal ordinance of this State or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e) or (f) of this section, which offense occurred after June 10, 1983; and

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section, if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(m) The fact that any person charged with a violation of subsection (a), (b), (c) or (d) hereof, or any person permitted to drive as described under subsection (e) or (f) hereof, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e) or (f) hereof.

(n) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in West Virginia Code Chapter 60A.

(o) The sentences provided herein upon conviction for a violation of this section are mandatory and shall not be subject to suspension or probation; provided, that the court may apply the provisions of West Virginia Code 62-11A-1 et seq., to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of West Virginia Code Article 62-11B may be used as an alternative sentence to any period of incarceration required by this section.

(WVaC 17C-5-2)

(p) For purposes of this section, the phrase "in this Municipality" means anywhere within the physical boundaries of this Municipality, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel.

(q) When used in this section, the terms or phrases "driving under the influence of intoxicating liquor," "driving or operating a motor vehicle while intoxicated," "for any person who is under the influence of intoxicating liquor to drive any vehicle," or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase "while under the influence of alcohol...drives a vehicle" as the latter term or phrase is used in this section.

(r) A warrant or indictment which charges or alleges an offense, prohibited by the provisions of this section, and which warrant or indictment uses any of the terms or phrases set forth in subsection (q) hereof, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him.

(WVaC 17C-5-2a)

### **333.02 RECKLESS DRIVING.**

(a) No person shall drive any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private or upon the property of the Board of Education, or upon any property within the Municipal park and public recreation system, in willful or wanton disregard for the safety of persons or property.

(b) The provisions of subsection (a) hereof shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Municipality within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WVaC 17C-5-3)

### **333.03 HAZARDOUS DRIVING.**

(a) No person shall operate a motor vehicle or motorcycle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a motor vehicle or motorcycle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a motor vehicle or motorcycle without giving his full time and attention to the operation of such vehicle.

### **333.99 PENALTY.**

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

Whoever violates Section 333.02 shall for a first offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00); for a second or subsequent offense shall be fined not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000).