

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

333.01	Driving under the influence.	333.03	Hazardous driving.
333.02	Reckless 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

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**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

(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 section 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 section 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) A person violating any provision of subsection (a), (b), (c), (d) (e) or (f) 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).

(i) A person violating any provision of subsection (a), (b), (c), (d), (e) or (f) 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.

(j) For purposes of subsections (h) and (i) 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

**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.)