
PART THREE — TRAFFIC CODE

ARTICLE 305 Driving Under the Influence; Reckless Driving

- 305.01** Driving under the influence.
- 305.02** Reckless driving.
- 305.03** Hazardous driving.
- 305.99** Penalty.

CROSS REFERENCES

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

305.01 Driving under the influence.

- (a) Any person who:
 - (1) Drives a vehicle in this Corporation while he or she:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug;
 - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent (0.08%) or more, by weight; and
 - (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than thirty days nor more than one year and shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).
- (b) Any person who:
 - (1) Drives a vehicle in this Corporation while he or she:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is 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 eight hundredths of one percent (0.08%) or more, by weight; and
 - (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000).
- (c) Any person who:
 - (1) Drives a vehicle in this Corporation while he or she:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;

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- C. Is under the influence of any other drug;
 - D. Is 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 eight hundredths of one percent (0.08%) or more, by weight, but less than fifteen hundredths of one percent (0.15%), by weight; and
- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (d) Any person who drives a vehicle in this State while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent (0.15%) or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this State is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (f) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this Corporation by any other person who:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is under the combined influence of alcohol and any controlled substance or any other drug;
 - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent (0.08%) or more, by weight; and
 - (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (g) Any person who knowingly permits his or her vehicle to be driven in this Corporation by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (h) Any person under the age of twenty-one years who drives a vehicle in this Corporation 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 eight hundredths of one percent (0.08%), by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor

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more than one hundred dollars (\$100). For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). 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 Motor Vehicle Alcohol Test and Lock Program as provided in WV 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 may not be construed as an admission or be used as evidence. A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f) or (g) or of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

- (i) Any person who:
- (1) Drives a vehicle in this Corporation while he or she:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;
 - C. Is under the influence of any other drug;
 - D. Is 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 eight hundredths of one percent (0.08%) or more, by weight; and
 - (2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than thirty days, which jail term is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000).
- (j) 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 period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that 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.
- (k) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f) of this section, or any person permitted to drive as described under subsection (g) or (h) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section.
- (l) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in West Virginia Code Chapter 60A.
- (m) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation; provided, that the court may apply the provisions of West Virginia Code article eleven-a, chapter sixty-two to a

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person sentenced or committed to a term of one year or less for a first offense under this section. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense; provided, however, that for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of WV Code; provided further, that for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of WV Code.

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 formal 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.

- (n) For purposes of this section, the phrase “in this Corporation” means anywhere within the physical boundaries of the Corporation of Harpers Ferry, 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.
- (o) 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.
- (p) 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 (o) hereof, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him. (WV Code 17C-5-2, 17C-5-2a. Ord. 2013-01, passed 02-11-2013.) ^[305.01]

305.02 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 Corporation's 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 Corporation within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WV Code 17C-5-3)

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- (c) Every person convicted of reckless driving may be punished upon a first conviction by imprisonment for a period of not less than five days nor more than thirty days, or by a fine of not more than five hundred dollars (\$500.00), or by both such fine and imprisonment, and on a second or subsequent conviction may be punished by imprisonment for not less than ten days nor more than thirty days, or by a fine of not more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment. (Ord. 2013-01, passed 02-11-2013.) ^[305.02]

305.03 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.

305.99 Penalty.

- (a) Whoever violates Section 305.02 shall for a first offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or imprisoned not less than five nor more than thirty days; for a second or subsequent offense shall be fined not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000), or imprisoned not less than ten nor more than thirty days, or both.
- (b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of Section 305.02 who in doing so proximately causes another to suffer serious bodily injury shall be confined in jail not less than ten days nor more than thirty days or fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) or both.
- (c) For purposes of subsection (b) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ. (Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

- 305.01 This section was previously codified as 333.01.
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