

University of Montana  
 Drug and Alcohol Abuse and Prevention

Revised: April 2020 from Montana Code Annotated 2019

**Montana Driving Laws: Drugs and Alcohol**

| <b>Unlawful Act</b>   | <b>Law</b>  | <b>Statute</b>   |
|---|---|--|
| <b>Circumstantial "DUI"</b><br><br><b>Driving Under the Influence of Drugs or Alcohol</b>                     | <p><b><u>"Under the influence"</u></b> means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished. If a driver's ability to safely operate a vehicle has been diminished by alcohol (regardless of BAC level, even if less than 0.08%) and/or drugs.</p> <p>"Drugs" include:</p> <ul style="list-style-type: none"> <li>• prescription drugs,</li> <li>• marijuana (medical or not),</li> <li>• illicit drugs,</li> <li>• any other illegal drug</li> </ul> | <p><a href="#"><u>MCA§ 61-8-401</u></a></p>  |
| <b>"BAC" DUI (Non-Commercial)</b><br><br><b>Driving a <u>non-</u>commercial vehicle</b>                       | <p>A blood alcohol content "BAC" violation is different from a Circumstantial DUI because the law requires only evidence that the driver's blood alcohol concentration is greater than or equal to .08% (BAC .08%).</p>   | <p><a href="#"><u>MCA§ 61-8-406</u></a><br/> <b>BAC 0.08 or Greater (Non-Commercial)</b></p>                                       |
| <b>with excessive blood alcohol concentration</b>   | <p>If the driver is under 21 years of age, blood alcohol concentration need only be greater than or equal to .02% (SAC .02%).</p>   | <p><a href="#"><u>MCA§ 61-8-410</u></a><br/> <b>Under 21 BAC greater than or equal to 0.02</b></p>                                 |
| <b>"BAC" DUI (Commercial)</b><br><br><b>Driving a commercial vehicle with excessive alcohol concentration</b> | <p>If the blood alcohol concentration of the driver of a Commercial Motor Vehicle is greater than or equal to .04%. (BAC 0.04%).</p> <p>If you have a CDL, you risk losing your livelihood as there are other severe penalties for those that possess a CDL (even if you drive impaired in your personal vehicle).</p>  | <p><a href="#"><u>MCA § 61-8-806</u></a><br/> <b>Operation of Commercial Vehicle with BAC of greater than or equal to 0.04</b></p> |
| <b>"Aggravated DUI"</b>   | <p>If the driver:</p> <ul style="list-style-type: none"> <li>• Has (BAC 0.16%) or more</li> <li>• Is already subject to ignition interlock restrictions</li> <li>• Has suspended or revoked driver license</li> <li>• Has a prior refusal to provide BAC evidence, or</li> <li>• Has prior DUI/BAC conviction.</li> </ul>   | <p><a href="#"><u>MCA§ 61-8-465</u></a></p>  |
| <b>"Open Container"</b>   | <p>If any person in a vehicle has an open alcoholic beverage container on a public road.</p> <ul style="list-style-type: none"> <li>• Not a criminal offense,</li> <li>• May not be recorded on a driver's record, and</li> <li>• Insurance company may not increase premiums.</li> </ul>   | <p><a href="#"><u>MCA§ 61-8-460</u></a></p>  |
| <b>"DUI Drugs" MARIJUANA</b>  | <p>It is unlawful for any person to drive or be in actual physical control of a commercial or non-commercial motor vehicle while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more.</p>  | <p><a href="#"><u>MCA§ 61-8-411</u></a></p>  |

**Implied Consent and Preliminary Alcohol Screening Test: MCA §§ [61-8-402](#), [61-8-409](#),**

**Definitions**

**Implied Consent:** A driver on public roads in Montana has, by law, consented to chemical test of their blood, breath, or urine to detect and/or measure the amount of alcohol or drugs in the person's system, if the driver has been arrested for driving under the influence of alcohol or drugs.

If the person refuses to submit to a test, the arresting officer will seize the person's driver license and issue a temporary driving permit (effective twelve hours after issuance and valid for five days).

If a person refuses to submit to a test, and has prior refusal to consent, or a prior or pending conviction for DUI, the officer may apply for a search warrant to get a blood sample.

**Preliminary Alcohol Screening Test:** A driver on public roads in Montana has, by law, consented to a preliminary alcohol-screening breath test to estimate alcohol concentration in the person's system, if the driver is suspected of driving under the influence of alcohol or drugs.

**Penalties for Refusal of Preliminary Alcohol Screening Test**

| <i>License Type</i>       | <i>First Refusal</i>  | <i>Second and Subsequent Refusals</i>   |
|---------------------------|---|---|
| Non-Commercial License    | Upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license; | Upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license. |
| Commercial Driver License | upon a first refusal, suspend the person's commercial driver's license for a 1-year period              | upon a second or subsequent refusal, suspend the person's commercial driver's license for life.   |

**Impaired Driving in Montana: Over Age 21**

| <i>Penalties</i>   | <i>Terms</i>   |
|--|--|
| <b>Jail* : DUI</b><br><i>(MCA§ 61-8-401)</i>                           | 1 <sup>st</sup> Conviction: 24 Hours - 6 Months<br>2 <sup>nd</sup> Conviction: 7 Days -1 Year<br>3 <sup>rd</sup> Conviction: 30 Days -1 Year   |
| <b>Jail*: BAC</b><br><i>(MCA§ 61-8-406)</i>                            | 1 <sup>st</sup> Conviction: Up to 6 Months<br>2 <sup>nd</sup> Conviction: 5 Days - 1 Year<br>3 <sup>rd</sup> Conviction: 30 Days -1 Year   |
| <b>Jail*: BAC</b><br><i>(MCA§ 61-8-465 Excessive BAC or Marijuana)</i> | 1 <sup>st</sup> , Conviction: Up to 6 months<br>2 <sup>nd</sup> , Conviction: 5 Days –1 Year<br>3 <sup>rd</sup> , Conviction: 30 Days -1 Year  |
| <b>Fine(s)</b>   | 1 <sup>st</sup> , Conviction: \$600 - \$1,000<br>2 <sup>nd</sup> , Conviction: \$1200 - \$2,000<br>3 <sup>rd</sup> , Conviction: \$2,500 - \$5,000<br><b>Fines <u>DO NOT</u> include court costs / attorney's fees.</b><br><b>Fines &amp; Jail time typically double if passengers under age 16 were in the vehicle at the time of arrest. <a href="#">45-5-207</a> Felony Criminal Endangerment may be charged.</b> |

| <i>Penalties</i>  | <i>Terms</i>   |
|---|--|
| <b>Drivers License</b>  | <p>1<sup>st</sup>, Conviction: 6 Months<br/> 2<sup>nd</sup>, Conviction: 1 Year<br/> 3<sup>rd</sup>, Conviction 1 Year</p> <p>A driver's license suspension commences from the date of conviction. For many offenders, the privilege to drive is withdrawn for the entire period listed above. A DUI / BAC violation in a personal (non-commercial) vehicle will impact a commercial drivers license, sometimes for life.</p> <p>If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under MCA <a href="#">61-8-732</a> &amp; <a href="#">44-4-1205</a>, the license suspension remains in effect until the Course or treatment, or both, are completed.</p>   |
| <b>Restricted Probationary Driver License</b>   | <p>Judge decides if and when driver is eligible for a restricted probationary driver license.</p> <ul style="list-style-type: none"> <li>• If the driver refused an alcohol test, a restricted probationary driver license is not allowed.</li> <li>• A \$200 driver license reinstatement fee is required.</li> </ul> <p>Driving permitted ONLY to and from driver's home, work, school, required chemical dependency programs, or location reasonably related to family matters.</p>   |
| <b>Driver Record</b>  | <p>A DUI/BAC conviction is on the Driver Record for Life.</p> <ul style="list-style-type: none"> <li>• 10 conviction points added to Driver Record for each DUI/BAC conviction</li> <li>• 30 conviction points= "Habitual Traffic Offender" = Driver License Revocation (<a href="#">MCA§ 61-11-203</a>)</li> </ul> <p><b>Five Year Look Back Period:</b></p> <p>If a driver is guilty of a DUI/BAC offense and less than 5 years have passed between the present offense and a previous conviction, then the driver has committed a 2<sup>nd</sup> or 3<sup>rd</sup> DUI/BAC offense under the law.</p> <ul style="list-style-type: none"> <li>• After 3 lifetime DUI/BAC convictions, all convictions are counted regardless of the time that has passed (<a href="#">MCA§ 61-8-734</a>).</li> <li>• A 4<sup>th</sup> conviction is a felony offense. There is no limitation on the look-back period for 4<sup>th</sup> or subsequent offenses.</li> </ul> |
| <b>Ignition Interlock</b>   | <p>Judge may order ignition interlock for 1<sup>st</sup> DUI/BAC conviction. Minimum, a 2<sup>nd</sup> 3<sup>rd</sup>, or subsequent DUI/BAC offender restricted to ignition interlock must:</p> <ul style="list-style-type: none"> <li>• complete 45 days of the 1-year suspension (2<sup>nd</sup> offense),</li> <li>• complete 90 days of the 1-year suspension (3<sup>rd</sup> offense), or</li> <li>• become an authorized DUI Court participant.</li> </ul> <p>Offender must pay all costs of ignition interlock device and may need to lease more than one.</p> <ul style="list-style-type: none"> <li>• Alternative: Judge may order every vehicle owned by driver to be seized.</li> </ul>  |
| <b>A - Assessment<br/>C-Course<br/>T - Treatment<br/><br/>Chemical<br/>Dependency</b> | <p>If convicted, a DUI offender will be court-ordered to:</p> <ul style="list-style-type: none"> <li>• receive a mandatory alcohol/drug <b>assessment</b></li> <li>• attend a chemical dependency education <b>course</b>, and</li> <li>• <b>treatment</b> and monitoring for a 2<sup>nd</sup> and 3<sup>rd</sup> time offender (may be ordered for 1st time offender if found to be chemically dependent).</li> </ul> <p>Offenders must attend, complete, and pay all requirements.</p>   |

| <b>Penalties</b>                          | <b>Terms</b>   |
|---|--|
| <b>4<sup>th</sup> Conviction - Felony</b> | <p>Fourth offense is a felony.</p> <ul style="list-style-type: none"> <li>Jail: Minimum 13 Months - Maximum Five Years</li> </ul> <p>If offender completes alcohol treatment program, then remainder of the 13-month sentence must be served on probation.</p> <ul style="list-style-type: none"> <li>This sentence may not be deferred or suspended, not eligible for parole.</li> <li>A fine not less than \$1,000 or more than \$10,000</li> <li>Driver's vehicle owned and operated by at the time of offense will be seized.</li> </ul> |

**Impaired Driving in Montana (Under Age 21, BAC 0.02% [MCA 61-8-410](#))**

**Under Age 18**

| <b>Penalties</b>             | <b>1<sup>st</sup> Conviction</b>  | <b>2<sup>nd</sup> Conviction</b>  | <b>3<sup>rd</sup> Conviction</b>  |
|------------------------------|---|---|---|
| <b>Jail</b>                  | None  | None  | None  |
| <b>Fine</b>                  | \$100 - \$500<br><i>(Not Including Court Costs)</i>   | \$200 - \$500<br><i>(Not Including Court Costs)</i>   | \$300 - \$500<br><i>(Not Including Court Costs)</i>   |
| <b>License</b>               | Same as for ages 18-20, but no probationary driver license for first 30 days of suspension. | Same as for ages 18-20, but no probationary driver license for first 30 days of suspension. | Same as for ages 18-20, but no probationary driver license for first 30 days of suspension. |
| <b>Courses and Treatment</b> | Same as for ages 18 -20   | Same as for ages 18-20  | Same as for ages 18-20  |

**Ages 18-20**

| <b>Penalties</b>             | <b>1<sup>st</sup> Conviction</b>   | <b>2<sup>nd</sup> Conviction</b>  | <b>3<sup>rd</sup> Conviction</b>  |
|------------------------------|--|---|---|
| <b>Jail</b>                  | None   | Maximum: 10 Days  | Minimum: 24 Hours<br>Maximum: 60 Days   |
| <b>Fine</b>                  | \$100 - \$500<br><i>(Not Including Court Costs)</i>  | \$200 - \$500<br><i>(Not Including Court Costs)</i>   | \$300 - \$500<br><i>(Not Including Court Costs)</i>   |
| <b>License</b>               | <p>Suspension: 90 Days or 6 Month s if BAC<math>\geq</math>0.08 .</p> <p>If BAC<math>\geq</math> 0.18, then ignition interlock device may be ordered.</p>  | <p>Suspension: 6 Months</p> <p>If restricted probationary license is allowed, ignition interlock device is required.</p>  | <p>Suspension: 1 Year</p> <p>If restricted probationary license is allowed, ignition interlock device is required.</p>  |
| <b>Courses and Treatment</b> | <p>Court-ordered to:</p> <ul style="list-style-type: none"> <li>receive alcohol/drug <b>assessment</b> ,</li> <li>attend chemical dependency education <b>course</b> , and</li> <li><b>treatment</b> and monitoring if found to be chemically dependent.</li> </ul> <p>Must complete and pay for all requirements.</p> | <p>Court-ordered to:</p> <ul style="list-style-type: none"> <li>receive alcohol/drug <b>assessment</b>,</li> <li>attend chemical dependency education <b>course</b>, and</li> <li><b>treatment</b>; monthly monitoring for at least one year.</li> </ul> <p>Must complete and pay for all requirements.</p> | <p>Court-ordered to:</p> <ul style="list-style-type: none"> <li>receive alcohol/drug <b>assessment</b>,</li> <li>attend chemical dependency education <b>course</b>, and</li> <li><b>treatment</b>; monthly monitoring for at least one year.</li> </ul> <p>Must complete and pay for all requirements.</p> |

**"Real-life consequences" of DUI/BAC:** increased insurance rates, restricted travel to other countries, and decreased education and career opportunities.

## Minors and Alcohol in Montana (Under Age 21)

"**Minors in Possession**": A person under the age of 21 who knowingly consumes or has in the person' s possession an intoxicating substance. ([MCA 45-5-624](#))

### Under Age 18

| Penalties for MIP<br>( <a href="#">MCA § 45-5-624</a> ) | 1 <sup>st</sup> Conviction  | 2 <sup>nd</sup> Conviction  | 3 <sup>rd</sup> Conviction  |
|---|---|---|---|
| <b>Fine</b>   | Minimum \$100<br>Maximum \$300<br><i>(Not Including Court Costs)</i>          | Minimum \$200<br>Maximum \$600<br><i>(Not Including Court Costs)</i>          | Minimum \$300<br>Maximum \$900<br><i>(Not Including Court Costs)</i>          |
| <b>Community Service</b>                                | 20 Hours  | 40 Hours  | 60 Hours  |
| <b>Jail</b>   | None  | None  | May be transferred to Youth Court   |
| <b>Driver License</b>                                   | Confiscated by Court: 30 days   | Confiscated by Court: 6 Months  | Confiscated by Court : 6 months   |
| <b>Substance Abuse Information Course</b>               | Must complete and pay for community-based substance abuse information course. | Must complete and pay for community-based substance abuse information course. | Must complete and pay for community-based substance abuse information course. |

### Ages 18-20

| Penalties for MIP<br>( <a href="#">MCA § 45-5-624</a> )                   | 1 <sup>st</sup> Conviction  | 2 <sup>nd</sup> Conviction  | 3 <sup>rd</sup> Conviction   |
|---|---|---|--|
| <b>Fine</b>   | Minimum \$100<br>Maximum \$300<br><i>(Not Including Court Costs)</i>          | Minimum \$200<br>Maximum \$600<br><i>(Not Including Court Costs)</i>  | Minimum \$300<br>Maximum \$900<br><i>(Not Including Court Costs)</i>   |
| <b>Community Service</b>  | 20 Hours  | 40 Hours  | 60 Hours   |
| <b>Jail</b>   | None  | None  | May be transferred to Youth Court  |
| <b>Driver License</b>   | None  | None  | None   |
| <b>A - Assessment (-Course)<br/>T - Treatment<br/>Chemical Dependency</b> | Must complete and pay for community-based substance abuse information course. | Must attend community-based substance abuse information course, receive a mandatory alcohol/drug <b>assessment</b> , potential <b>treatment</b> and monitoring. | Must attend community-based substance abuse information course, receive a mandatory alcohol/drug <b>assessment</b> , potential <b>treatment</b> and monitoring |

### Other Alcohol-Related Information

**Under 21 Attempting to Purchase:** Fine - Maximum \$150; Community Service.

**Sale of Alcohol to Someone Under 21 Years of Age:** Fine - Maximum \$500 (2nd Conviction : Maximum \$1,000) and/or Jail (County): Maximum 6Months.

**Drinking in Public (Missoula City Ordinance 9.26.020):** Cannot openly drink in public places including vehicles, streets, avenues, alleys, parking lot s. Fine - (TBD).

**Montana Drug-Related Laws / [MCA Title 45 Chapter 9 Dangerous Drugs](#)**

| Drug or Crime/ MCA Code§   | Quantity/<br>Illegal Action  | Penalties   |
|--|--|---|
| <b>Marijuana / Hashish</b><br><i>MCA § <a href="#">45-9-102(2)</a></i>                                       | <i>60 Grams Marijuana<br/>or 1 Gram<br/>Hashish</i>  | <b>1<sup>st</sup> Conviction:</b> Misdemeanor Fine: Not to exceed - \$500<br><b>2<sup>nd</sup> Conviction:</b><br>Fine: Not to exceed - \$500<br>Jail not to exceed 6 months or both<br><b>3<sup>rd</sup>, Conviction:</b><br>Fine: Not to exceed \$1000<br>Jail Not to exceed 1 year or both |
| <b>Anabolic Steroids</b><br><i>MCA § <a href="#">45-9-102(3)</a></i>   | <i>Possession</i>  | Misdemeanor<br>Fine: Minimum \$100 - Maximum \$500<br>and/or<br>Jail (County): Maximum 6 Months   |
| <b>Opiate</b><br><i>MCA § <a href="#">45-9-102(3)</a></i>  | <i>Possession</i>  | Fine: Maximum \$50,000<br>and/or<br>Jail (Prison): Not to exceed 5 Years  |
| <b>Other "Dangerous<br/>Drugs"</b><br><i>MCA § <a href="#">45-9-102(3)</a></i>                               | <i>Possession</i>  | Fine: Maximum \$50,000<br>and/or<br>Jail (Prison): Not to exceed 5 Years  |
| <b>Manufacture or<br/>Delivery of Drug<br/>Paraphernalia</b><br><i>MCA § <a href="#">45-10-104</a></i>       | <i>Possession,<br/>Delivery,<br/>Production</i>  | Misdemeanor<br>Fine : Maximum \$500<br>and/or<br>Jail (County): Not to exceed 6 Months  |
| <b>Delivery of Drug<br/>Paraphernalia to<br/>Minor</b><br><i>MCA § <a href="#">45-10-105</a></i>             | <i>Violation of MCA §<br/>45-10-104<br/>+<br/>Delivery to<br/>Age &lt; 18</i>  | Misdemeanor<br>Fine: Maximum \$1,000<br>and/or<br>Jail (County): Not to exceed 1 Year   |
| <b>Unlawful Sale of<br/>Drugs or Alcohol to<br/>Underage Person</b><br><i>MCA § <a href="#">45-5-623</a></i> | <i>Sells or gives<br/>intoxicating<br/>substance to minor<br/>under the age of 18<br/>(drugs / tobacco) or<br/>under the age of 21<br/>(alcohol)</i> | Misdemeanor<br>Fine: Maximum \$500 (\$1,000 2 <sup>nd</sup> offense)<br>and/or<br>Jail (County): Not to exceed 6 Months   |

| Drug or Crime/MCA Code§   | Quantity/ Illegal Action  | Penalties  |
|---|---|--|
| <b>Fraudulently Obtaining Drugs</b><br><i>MCA § <a href="#">45-9-106</a> and <a href="#">45-9-104</a></i> | Fraudulently (forging, lying to doctor, using fake ID) attempts or obtains dangerous drugs.<br><br><u><b>Altering Drug Labels</b></u> | <b>1<sup>st</sup> Conviction</b><br>Fine: Maximum \$50,000<br>and/or<br>Jail (prison): Minimum 1 Year - Maximum 5 Years<br><b>2<sup>nd</sup> Conviction</b><br>Fine: Maximum \$50,000<br>and/or<br>Jail (prison): Minimum 5 Years - Maximum 10 Years<br><br><u><b>Jail: Not to exceed 6 months</b></u>   |
| <b>Criminal Distribution of Dangerous Drugs</b><br><i>MCA § <a href="#">45-9-101</a></i>                  | Actually or offers to:<br><br>Sell, barter, exchange, or give away any dangerous drugs (besides Marijuana).                           | <b>1<sup>st</sup> Conviction</b><br>Jail (Prison): Not to exceed 25 Years<br>and/or<br>Fine: Not to exceed \$50,000<br>More severe sentence:<br>Distribution to minor under age 18 and/or distribution within 1,000 ft. school zone.<br><b>2<sup>nd</sup> Conviction</b><br>Jail (Prison): Minimum 10 Years, Maximum Life Sentence<br>and/or<br>Fine: Maximum \$50,000<br>More severe sentence:<br>Distribution to minor under age 18 and/or distribution within 1,000 ft. school zone.<br><b>3<sup>rd</sup> Conviction</b><br>Jail (Prison): Minimum 20 Years, Maximum Life Sentence<br>and/or<br>Fine: Maximum \$50,000<br>More severe sentence:<br>Distribution to minor under age 18 and/or distribution within 1,000 ft. school zone. |

### Federal Drug Penalties: Possession of Controlled Substance

| Penalty       | 1 <sup>st</sup> Conviction           | 2 <sup>nd</sup> Conviction           | 3 <sup>rd</sup> Conviction or Subsequent |
|---------------|--------------------------------------|--------------------------------------|--|
| <b>Fine</b>   | Minimum \$1,000<br>Maximum \$100,000 | Minimum \$1,000<br>Maximum \$250,000 | Minimum \$5,000<br>Maximum \$250,000     |
| <b>Prison</b> | Maximum 1 Year                       | Minimum 15 Days<br>Maximum 2 Years   | Minimum 90 Days<br>Maximum 3 Years       |

### Further Provisions

**Forfeiture of Property:** If the jail sentence is more than 1 year, then the property (including vehicles, etc.) used to possess drugs must be forfeited to authorities.

**Civil Fine:** Maximum \$10,000.

**Loss of Federal Benefits:** Ineligible for student loans, grants, contracts, and professional and commercial licenses, up to 1 year for 1st conviction, up to 5 years for 2nd conviction. Ineligible to receive or purchase a gun.