

## It's a Privilege to Drive: *Snapshot of Impaired Driving in Montana*

<b><i>Unlawful Acts</i></b>	<b><i>Notes</i></b>	<b><i>Montana Code</i></b>
<b>Drive under the influence of drugs or alcohol: "DUI"</b>	<p>The basis for the charge is evidence that a person's ability to safely operate a vehicle has been diminished by alcohol (any level, including alcohol concentration less than 0.08%) and/or drugs.</p> <p>Drugs includes prescription drugs, marijuana (medical or not), illicit drugs, any other drug, or any combination thereof</p>	<b>MCA § 61-8-401</b>
<b>Operate a <u>noncommercial</u> vehicle with excessive alcohol concentration; "BAC"</b>	<p>A "BAC" violation does require proof of impairment, only that alcohol concentration is greater than or equal to 0.08%.</p> <p>If you are under 21 years of age, a BAC of <math>\geq 0.02\%</math> will result in impaired driving.</p>	<b>MCA § 61-8-410 and § 61-8-406</b>
<b><u>Commercial Motor Vehicle</u> with an alcohol concentration "BAC" <math>\geq 0.04\%</math></b>	<p>If you drive a Commercial Motor Vehicle (CMV), you have different BAC requirements. If you drive or are in actual physical control of a CMV and your BAC is <math>\geq 0.04\%</math>, you are breaking the law.</p> <p>If you have a CDL, you risk loosing you livelihood as there are other severe penalties for those that possess a CDL even if you drive impaired in your <u>personal</u> vehicle.</p>	<b>MCA § 61-8-806</b>
<b>"Aggravated DUI"</b>	<p>"Aggravated DUI" may be charged in a variety of circumstances, such as:</p> <ul style="list-style-type: none"> <li>• If a driver has "BAC" <math>\geq 0.16\%</math></li> <li>• Is already subject to ignition interlock restrictions.</li> <li>• Driving with a suspended or revoked driver's license.</li> <li>• Has a prior refusal to provide BAC evidence.</li> <li>• Prior DUI/BAC conviction.</li> </ul>	<b>MCA § 61-8-465</b>
<b>Open Container</b>	<p>A person commits the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway (\$100 Fine), but does not apply to an open alcoholic beverage container:</p> <p><i>A violation of this section is not a criminal offense and may not be recorded or charge against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums.</i></p>	<b>MCA § 61-8-460</b>

**Implied Consent and Preliminary Alcohol Screening Test:  
MCA §§ 61-8-402, 61-8-409, and 61-8-402(7)**

<p><b>Implied Consent</b></p>	<p>Any person who operates a vehicle on the ways of this state shall be deemed to have given consent to a chemical test of their blood, breath, or urine to detect and/or measure the amount of alcohol or drugs in the person's body, if arrested by a peace officer for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or a combination of the two.</p> <ul style="list-style-type: none"> <li>• If the person refuses to submit to a test, the arresting officer will seize the person's driver's license and issue a temporary driving permit that will be effective twelve hours after issuance and valid for five days.</li> <li>• If a person refuses to submit to a test, and has a prior refusal, prior conviction (for DUI or vehicular homicide or negligent vehicular assault), or a pending conviction, an officer may apply for a search warrant to get a blood sample.</li> </ul>	
<p><b>Preliminary Alcohol Screening Test</b></p>	<p>"A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol-screening breath test" to estimate alcohol concentration. A peace officer who has a 'particular suspicion' that a person was driving or in actual physical control of a vehicle upon the 'ways of this state open to the public' while under the influence of alcohol may request and administer the test.</p> <p>A person may refuse the preliminary alcohol-screening test after the peace officer informs the person of the right to refuse and of the specific consequences of refusal. However, a refusal will result in the suspension for up to 1 year of the person's drivers license. However, you can request a hearing to challenge the suspension where the court will examine whether the officer legitimately had a 'particularized suspicion' that the person was driving while under the influence of alcohol.</p>	
<p><b>Penalties For Refusal of Preliminary Alcohol Screening Test</b></p>	<p align="center"><i>First Refusal</i></p>	<p align="center"><i>Second and Subsequent Refusals</i></p>
<p><b>Non-Commercial License</b></p>	<p>Suspended for six months, with no provision for a restricted probationary license.</p>	<p>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.</p>
<p><b>Commercial Driver's License:</b> <i>In addition to any action taken against the driver's non-commercial driving privileges</i></p>	<p>Suspend the person's commercial driver's license for a 1-year period</p>	<p>Suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years</p>

## Impaired Driving in Montana: Over Age 21

The penalty provisions are contained in several of the Montana statutes, including MCA §§ 61-714, 61-8-732, 61-8-442, 61-5-208, 61-8-734, 46-16,130, 61-11-203, 44-4-12, and others. There are also sever “real-life penalties” that are likely DUI/BAC consequences, such as increased insurance rates, restricted travel to other countries, and decreased education and career opportunities. The following table does not address these “real-life penalties”, and is simply a summary of the main penalties and is not intended to represent the subtleties of the law that appear within the context of each individual case.

Penalties	1 <sup>st</sup> Conviction	2 <sup>nd</sup> Conviction	3 <sup>rd</sup> Conviction
<b>Jail</b>	<i>Minimum incarceration time listed must be served in jail, not under house arrest, and cannot be suspended</i>		
DUI (MCA § 61-8-401)	24 Hours – 6 Months	7 Days – 1 Year	30 Days – 1 Year
BAC (MCA § 61-8-406)	Up to 6 Months	5 Days – 1 Year	30 Days – 1 Year
<b>Fine</b> (Exclusive of Court Costs)	\$300 - \$1,000	\$600 - \$1,000	\$1,000 - \$5,000
<b>Passengers &lt; age 16</b>	<i>Fines and jail time typically double if passenger under age 16 in vehicle time of arrest</i>		
<b>Drivers License</b>	6 Month Suspension	1 Year Suspension	1 Year Suspension
	<ul style="list-style-type: none"> <li>• Commences from the date of the conviction</li> <li>• For many offenders, the privilege to drive is withdrawn for the entire period listed</li> <li>• 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 § 61-8-732 and/or 44-4-1205, the license suspension remains in effect until the course or treatment, or both, are completed.</li> </ul>		
<b>Restricted Probationary Driver License</b>	<ul style="list-style-type: none"> <li>• The convicting judge determines if and when an offender is eligible for a restricted probationary driver license.</li> <li>• No restricted probationary driver license is allowed if the driver refused to provide an alcohol test when requested by the investigating officer.</li> <li>• A \$200 driver license reinstatement fee is required.</li> <li>• Driving permitted ONLY to and from driver’s residence and: work or school, required chemical dependency programs, a location reasonably related to the maintenance of the household.</li> </ul>		
<b>Driver Record</b>  <i>A DUI/BAC conviction is on the Driver Record for Life</i>	<ul style="list-style-type: none"> <li>• Ten conviction points added to the Driver Record for each DUI/BAC conviction</li> <li>• 30 conviction points = “Habitual Traffic Offender” = Driver License Revocation (MCA § 61-11-203)</li> </ul> <p><b>Five Year Look Back Period:</b> A person commits a 2<sup>nd</sup> or 3<sup>rd</sup> DUI/BAC offense if less than 5 years have passed between the present offense and a previous conviction.</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 (MCA § 61-8-734).</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>A judge may order ignition interlock for an offender convicted of 1<sup>st</sup> offense DUI/BAC. At a minimum, a 2<sup>nd</sup>, 3<sup>rd</sup>, or subsequent DUI/BAC offender restricted to ignition interlock must complete 45 days of the 1-year suspension (2<sup>nd</sup> offense); 90 days of the 1-year suspension (3<sup>rd</sup> offense); or be an authorized DUI Court participant.</p> <ul style="list-style-type: none"> <li>• The offender must pay all costs associated with installation, lease, and maintenance of ignition interlock. An offender may need to lease more than</li> </ul>		

	<p>one.</p> <ul style="list-style-type: none"> <li>As an alternative, the judge may order every vehicle owned by the offender to be seized and forfeited.</li> </ul>
<p><b>A-C-T</b></p> <p><b><i>Chemical Dependency Assessment, Education Course, Treatment</i></b></p> <p><b>A – Assessment</b>  <b>C – Course</b>  <b>T - Treatment</b></p>	<ul style="list-style-type: none"> <li>Following conviction, all DUI offenders are court-ordered to receive a mandatory chemical dependency assessment to determine the nature and extent of their alcohol/drug problems.</li> <li>All offenders are required to attend PRIME For Life, a chemical dependency education course.</li> <li>Treatment is mandatory on 2<sup>nd</sup> and 3<sup>rd</sup> offenses, but may be ordered for a first time offender if he/she is found to be chemically dependent.</li> <li>For 2<sup>nd</sup> and 3<sup>rd</sup> DUI/BAC offenses, the treatment program is followed by monthly monitoring for at least one year from the date of admission to the program.</li> <li>If the offender fails to attend education or treatment programs, the counselor notifies the court and the county attorney.</li> <li>Offenders pay all costs, and failure to complete all requirements may be deemed non-compliant and subject to court action.</li> </ul>
<p><b>4<sup>th</sup> Conviction - Felony</b></p>	<p>Along with penalties already mentioned, the fourth offense is a felony for which the person shall be sentenced to the department of corrections for placement in an appropriate correctional facility or program for 13 months; if the person completes a residential alcohol treatment program, the remainder of the 13 month sentence must be served on probation; the person shall also be sentenced to a suspended and consecutive term of prison incarceration for not more than five years</p> <ul style="list-style-type: none"> <li>This sentence may not be deferred or suspended, and the person is not eligible for parole</li> <li>A fine not less than \$1,000 or more than \$10,000</li> <li>Motor vehicle owned and operated by the person at the time of the offense will be seized by local authorities and subject to forfeiture</li> </ul>

**Impaired Driving in Montana**  
***Special Provisions For Those Ages 18-20 and Those Under Age 18***  
**BAC ≥ 0.02%**

<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><i>Ages 18-20</i></b>			
<b>Jail</b>	None	Incarceration of not more than 10 days	Incarceration for not less than 24 hours or more than 60 days
<b>Fine</b> ( <i>Exclusive of Court Costs</i> )	\$100 - \$500	\$200 - \$500	\$300 - \$500
<b>License</b>	90 Days suspension of license, or 6 months suspension if the driver's alcohol concentration was 0.08 or more; if the driver's alcohol concentration was 0.18 or greater, the court may limit any driving under a restricted probationary license to a vehicle equipped with a functional ignition interlock device, if available. \$100 reinstatement fee.	Six months suspension of driver's license; any driving under a restricted probationary license is limited to a vehicle equipped with a functional ignition interlock device, if available. \$100 reinstatement fee.	One year suspension of driver's license; any driving under a restricted probationary license is limited to a vehicle equipped with a functional ignition interlock device, if available. \$100 reinstatement fee.
<b>Courses and Treatment</b>	Person convicted must complete and pay for a chemical dependency assessment and a chemical dependency education course. Alcohol and drug treatment is required if the person is found to be chemically dependent	Person convicted must complete and pay for a chemical dependency assessment, a chemical dependency course, and chemical dependency treatment. Following the completion of chemical dependency treatment, convicted person must submit to monthly monitoring for at least one year from the date of admission to chemical dependency treatment	Person convicted must complete and pay for a chemical dependency assessment, a chemical dependency course, and chemical dependency treatment. Following the completion of chemical dependency treatment, convicted person must submit to monthly monitoring for at least one year from the date of admission to chemical dependency treatment
<b><i>Under Age 18</i></b>			
<b>Jail</b>	None	None	None
<b>Fine</b> ( <i>Exclusive of Court Costs</i> )	\$100 - \$500	\$200 - \$500	\$300 - \$500
<b>License</b>	Same as above except: If the person was under 18 at the time of the offense, no	Same as above except: If the person was under 18 at the time of	Save as above except: If the person convicted was under the age of 18 at the time of the

	probationary driver's license may be issued for the first 30 days of any suspension	the offense, no probationary driver's license may be issued for the first 30 days of any suspension	offense, no probationary driver's license may be issued for the first 30 days of any suspension
<b>Courses and Treatment</b>	Same As Above	Same As Above	Same As Above

## Montana Drug Related Laws

Drug or Crime/ MCA Code §	Quantity/ Action	Description of the Law and the Related Penalties	
<b>Marijuana / Hashish MCA § 45-9-102(2)</b>	<i>Aggregate 60 Grams of Marijuana or 1 Gram of Hashish</i>	<b>First Offense:</b> Misdemeanor and punished by a fine of \$100 - \$500 and by imprisonment up to 6 months, but is presumptively entitled to a deferred imposition of sentence	<b>Second Offense:</b> Fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both
<b>Anabolic Steroid MCA § 45-9-102(3)</b>	<i>Criminal Possession</i>	Misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both, first violation presumed to be entitled to deferred imposition of imprisonment	
<b>Opiate MCA § 45-9-102(4)</b>	<i>Criminal Possession</i>	Shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000	
<b>Other "Dangerous Drugs" MCA § 45-9-102(6)</b>	<i>Criminal Possession</i>	Shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both, first violation presumed to be entitled to a deferred sentence of imprisonment	
<b>Manufacture or Delivery of Drug Paraphernalia MCA § 45-10-104</b>	<i>See Description</i>	It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than \$500, or both.	
<b>Delivery of Drug Paraphernalia to Minor MCA § 45-10-105</b>	<i>Violation of MCA § 45-10-104 (see above)</i>	Any person 18 years of age or older who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years younger is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year or be fined not more than \$1,000, or both.	
<b>Unlawful Transaction with Children MCA § 45-5-623</b>	<i>"Person Knowingly"</i>	A person commits the offense of unlawful transactions with children if he/she knowingly sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority or sells or gives an alcoholic beverage to a person under 21 years of age. A person convicted of the offense of unlawful transactions with children shall be fined up to \$500 or be imprisoned for a term or no more than 6 months, or both. For a second similar offense, the person shall be fined up to \$1,000 or be imprisoned for up to 6 months, or both	
<b>Fraudulently Obtaining Drugs MCA § 45-9-106 and 45-9-104</b>	<i>See Description</i>	A person commits the offense of fraudulently obtaining dangerous drugs if the person obtains or attempts to obtain a dangerous drug by fraud, misrepresentation, forging, failing to tell a practitioner of obtaining the same or similar drugs from another prescription, or altering a prescription and using false identification. A person convicted of fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs will be imprisoned for 1 to 5 years or fined up to \$50,000, or both. For a second	

		conviction, a person will be imprisoned for 5 to 10 years or fined up to \$50,000, or both. A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.
<b>Criminal Distribution of Dangerous Drugs MCA § 45-9-101</b>	<i>Crime</i>	A person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug.
	<i>Penalties</i>	<p><u>Narcotic Drug or Opiate:</u> Imprisonment in the state prison for a term of not less than 2 years or more than life and may be fined not more than \$50,000.</p> <ul style="list-style-type: none"> <li>• A person convicted of criminal distribution of a dangerous drug in Schedule I or Schedule II (except marijuana or tetrahydrocannabinol), who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term not less than 10 years or more than life and may be fined not more than \$50,000.</li> <li>• A 3<sup>rd</sup> or subsequent shall be imprisoned in the state prison for a term not less than 20 years or more than life and be not more than \$50,000.</li> </ul> <p>A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection above shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.</p> <p><i>A person convicted of criminal distribution to a minor shall receive a sentence more severe than those stated above. Criminal distribution of dangerous drugs on or near school property (in, on, or within 1,000 feet of a school) also carries sentences that are more severe than those previously stated.</i></p>

## Federal Drug Penalties: Possession of Controlled Substance

	<b>1<sup>st</sup> Conviction</b>	<b>2<sup>nd</sup> Conviction</b>	<b>3<sup>rd</sup> Conviction or Subsequent</b>
<b>Fine</b>	Minimum \$1,000 Max \$100,000	Minimum \$1,000 Max \$250,000	Minimum \$5,000 Max \$250,000
<b>Prison</b>	Up to 1 Year	Minimum 15 Days Max 2 Years	Minimum 90 Days Max 3 Years
<b><i>Further Provisions</i></b>			
<b>Forfeiture of Property</b>	Forfeiture of personal and real property used to possess or to facilitate possession of a controlled substance if that offense is punishable by more than 1 year imprisonment. Forfeiture of vehicles, boats, aircraft, or any other conveyance used to transport or conceal a controlled substance.		
<b>Civil Fine</b>	Up to \$10,000		
<b>Loss of Federal Benefits</b>	<ul style="list-style-type: none"> <li>• Denial of federal benefits, such as student loans, grants, contracts, and professional and commercial licenses, up to 1 year for first offense, up to 5 years for second and subsequent offenses.</li> <li>• Ineligible to receive or purchase a firearm; revocation of certain federal licenses and benefits, e.g., pilot licenses or public housing tenancy, are vested within the authorities of individual federal agencies</li> <li>• Substantial penalties are also associated with trafficking in or distribution of controlled substances</li> </ul>		

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

*There are different penalties associated with those under age 18 and those between the ages of 18-20. "Minor In Possession" citations can be given to underage individuals for "possessing" or "knowingly consuming" alcohol or other intoxicating substances. This law does not apply to employment situations where it is necessary to possess alcoholic beverages.*

Penalties for MIP (MCA § 45-5-624)	1 <sup>st</sup> Conviction	2 <sup>nd</sup> Conviction	3 <sup>rd</sup> Conviction
<b>Under the Age of 18</b>			
<b>Fine</b> ( <i>Exclusive of Court Costs</i> )	\$100 - \$300	\$200 - \$600	\$300 - \$900
<b>Community Service</b>	20 Hours	40 Hours	60 Hours
<b>Jail</b>	None	None	A person who doesn't complete his/her sentence for an MIP received when under age 18 and is now over 18 must be transferred to the Youth Court. The Youth Court will determine if the person is to be considered as a "youth in need of intervention"
<b>Drivers License</b>	Confiscated by the Court for 30 days	Confiscated by the Court for 6 Months	Confiscated by the Court for 6 months
<b>Information Course Substance Abuse Assessment Substance Abuse Treatment</b>	Youth and parents/guardians must pay for and complete a community based substance abuse information course, if one is available	Youth and parents/guardians must pay for and complete a community based substance abuse information course, if one is available	Youth and parents/guardians must pay for and complete a community based substance abuse information course, if one is available
<b>Over 18 But Less Than 21 Years of Age</b>			
<b>Fine</b> ( <i>Exclusive of Court Costs</i> )	\$100 - \$300	\$200 - \$600	\$300 - \$900
<b>Community Service</b>	20 Hours	40 Hours	60 Hours
<b>Jail</b>	None	None	A person who doesn't complete his/her sentence for an MIP received when under age 18 and is now over 18 must be transferred to the Youth Court. The Youth Court will determine if the person is to be considered as a "youth in need of intervention"
<b>Drivers License</b>	None	None	None
<b>Information Course Substance Abuse Assessment Substance Abuse Treatment</b>	Shall be ordered to complete and pay for all costs of participation in a community-based substance abuse information program	Shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program, which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include	Shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program, which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include alcohol treatment

		alcohol treatment	
<b><i>Other Alcohol Related Information</i></b>			
<b>All Persons Under 21 Knowingly Attempting to Purchase</b>	A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.		
<b>Unlawful Transactions With Persons Under 21 Years of Age</b>	A person commits the offense of unlawful transactions with children if the person knowingly sells or gives intoxicating substances, including alcoholic beverages, to a person less than 21 years of age. A person convicted of this offense shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed six months, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed six months, or both.		
<b>Missoula City Ordinance Public Drinking</b>	In addition to federal and state laws concerning consumption of alcohol, the city of Missoula has restricted public drinking and public display of beer, wine, or liquor. It is unlawful for any person to engage in public drinking or display within the city limits. Public places means all vehicles, streets, avenues, alleys, publicly-owned parking lots, and privately owned parking lots open to the public for parking in the city, except the parking lots on The University of Montana campus. However, alcohol consumption is prohibited in University parking lots without specific authorization from University officials.		