

Driving under the influence of alcohol/drugs

PENALTIES

as of June, 2017

Driving is a privilege not a right. There are several Montana laws related to impaired driving. It is unlawful to:

1. Drive while **under the influence of alcohol or drugs** (“DUI”).....§ 61-8-401, Montana Code Annotated (MCA)
 - o The basis for the charge is evidence that a person’s ability to safely operate a vehicle has been diminished by alcohol and/or drugs.
 - o Drugs includes prescription drugs, marijuana (even if the driver is a registered cardholder), illicit drugs, any other drug, or any combination of drugs and alcohol that impair safe operation.
 - o With sufficient evidence that a driver is under the influence of drugs and/or alcohol, an individual can be convicted of DUI *even if their BAC is below 0.08*.
2. Operate a vehicle with **excessive blood alcohol concentration** (“BAC”).....§ 61-8-406, MCA
 - o A BAC violation does not require proof of impairment, only that alcohol concentration (BAC) \geq **0.08** (the threshold for non-commercial vehicles).
 - o A commercial vehicle operator’s threshold is a BAC of **0.04**.
 - o The BAC threshold for persons under age 21 is **0.02**.
3. Operate a vehicle with **excessive marijuana concentration**.....§ 61-8-411, MCA
 - o With blood levels of 5 ng/ml of Delta-9-Tetrahydrocannabinol or more, a driver is presumed to be too impaired to drive safely. *Effective October 1, 2013*.
 - o With sufficient evidence of impairment, a person can be convicted of DUI with a THC level below 5 ng/ml.
 - o Applies to all commercial and non-commercial drivers, including individuals registered as cardholders with Montana’s Marijuana Program.
4. Commit an **Aggravated DUI**.....§ 61-8-465, MCA

Some impaired drivers have a higher risk of reoffending, and are subject to greater penalties. Aggravated DUI may be charged in a variety of circumstances, such as:

 - if a driver has BAC \geq 0.16%
 - is already subject to ignition interlock restrictions
 - was driving with a suspended or revoked driver license
 - has a prior refusal to provide BAC evidence
 - has a pending charge or prior DUI/BAC conviction

Penalties are dispersed through several statutes, including § 61-8-714, 61-8-732, 61-8-442, 61-5-208, 61-8-734, 46-16-130, 61-11-203, 44-4-12, MCA and others. The table below is a simple summary of the main penalties. *Please note: This is not intended to represent all aspects of law that may apply in individual cases.*

Other real-life penalties

This summary does not address other likely DUI/BAC consequences, such as increased insurance rates, restricted travel to other countries, and decreased career opportunities. For more information, visit www.plan2live.mt.gov.

PENALTIES	1st conviction	2nd conviction	3rd conviction
Jail	<i>Minimum incarceration time listed must be served in jail, not under house arrest, and cannot be suspended.</i>		
DUI	jail 24 hours – 6 months	7 days – 1 year	30 days – 1 year
Excessive BAC or Marijuana	up to 6 months	5 days – 1 year	30 days – 1 year
Fine (doesn't include court costs)	\$600 – \$1000	\$1200 – \$2000	\$2500 – \$5000
Passengers < age 16	<i>Fines and jail time typically double if passengers under age 16 were in the vehicle at the time of arrest. Felony criminal endangerment may be charged.</i>		
DUI	fine of \$1200 – \$2,000 jail 48 hours – 1 year	fine of \$2,400 – \$4,000 jail 14 days – 1 year	fine of \$5,000 – \$10,000 jail 60 days – 1 year
Excessive BAC or Marijuana	fine of \$600 – \$2,000 up to 6 months in jail	fine of \$1,200 – \$2,000 jail 10 days – 1 year	fine of \$2000 – \$10,000 jail 60 days – 1 year
Driver License	6 month suspension A driver 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 driver’s license, sometimes <i>for life</i> . <i>If the 1 year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under § 61-8-732 and/or 44-4-1205, MCA the license suspension remains in effect until the course or treatment, or both, are completed.</i>	1 year suspension	1 year suspension
Restricted Probationary Driver License	The convicting judge determines if and when an offender is eligible for a restricted probationary driver license. An ignition interlock may be required (see more information below). A \$200 driver license reinstatement fee is required. No restricted probationary driver license is allowed if the driver refused to provide an alcohol test when requested by the investigating officer. <i>Driving is permitted <u>only</u> to and from driver’s residence and: ✓ work or school ✓ required chemical dependency programs ✓ a location reasonably related to maintenance of the household.</i>		
Driver Record	Ten conviction points are added to the Driver Record for each DUI/BAC conviction. 30 conviction points = Habitual Traffic Offender ⇒ driver license revocation (§ 61-11-203, MCA) A DUI/BAC conviction is on the Driver Record FOR LIFE!		
Counting Convictions	A person commits a 2 nd DUI/BAC offense if less than ten years have passed between the present offense and a previous conviction. This is known as the “look back” period. There is no limitation on the look-back period for 3 rd or subsequent offenses, regardless of time passed (§ 61-8-734, MCA). A 4 th conviction is a felony offense.		
Ignition Interlock or Vehicle Forfeiture	A judge may order ignition interlock for an offender convicted of 1 st Offense DUI/BAC/Marijuana. At a minimum, a 2 nd , 3 rd or subsequent DUI/BAC offender restricted to ignition interlock must complete 45 days of the 1-year suspension (2 nd offense); 90 days of the 1-year suspension (3 rd offense); or be an authorized DUI Court participant. The offender must pay all costs associated with installation, lease, and maintenance of ignition interlock. An offender may need to lease more than one interlock device in order to accommodate all of their driving needs. As an alternative to ignition interlock, a judge may order every vehicle owned by an offender to be seized and forfeited.		
Montana Marijuana Registry	Individuals convicted of driving under the influence of marijuana will have their registry identification card suspended or revoked (§ 50-46-320 (7), MCA).		
24-7 Sobriety Program	Applies to people charged with a 2 nd or subsequent DUI/BAC as a condition of their release from jail pending trial. Some offenders can also be sentenced to the program if they are convicted of DUI or BAC, or as a condition of probation or parole. Abstinence from alcohol and drug use is required. Compliance is monitored via twice-daily alcohol breath tests, an alcohol-monitoring ankle bracelet, or any combination of drug patch testing, urinalysis, saliva testing, or other approved testing. More information may be found at www.doj.mt.gov/247-sobriety-program .		
A - C - T Phases	Following 1 st DUI conviction, all DUI offenders are court-ordered to participate in the A – C – T phases. Offenders must pay all costs associated with A - C - T requirements and services. These include:		
A = <u>A</u> ssessment	• Receiving a mandatory chemical dependency Assessment to determine the nature and extent of their alcohol/drug problems. Assessments are conducted by licensed addiction counselors (LACs) who are part of a DPHHS-approved chemical dependency treatment program.		
C = <u>C</u> ourse	• Participating in <i>PRIME For Life</i> ®, a chemical dependency education Course , at a DPHHS-approved program.		
T = <u>T</u> reatment	• Treatment is mandatory on 2 nd and 3 rd offenses, but may be ordered for a first-time offender if he/she is found to be chemically dependent by an LAC. Treatment must be at a level appropriate to the level of chemical dependency noted in the assessment. • For 2 nd and 3 rd DUI/BAC offenses, the treatment program is followed by monthly monitoring for at least one year from the date of admission to the program. Failure to follow through with the monitoring can affect the suspended sentence. • If the offender fails to attend the education course or treatment program, the counselor notifies the court and the county attorney. Offenders who fail to comply with A - C - T requirements may be deemed non-compliant and subject to court action.		