

STATE:  
General Reference:

**MONTANA**  
Montana Code Annotated

Basis for a DWI Charge:

Standard DWI Offense: Illegal Per Se Law (BAC/BrAC):	Under the influence of alcohol §61-8-401(1)(a) <b>≥.08</b> <sup>695and696</sup> 61-8-406(1)(a) Between >.04 to < .08, no inference but may be considered as evidence. §61-8-401(4) b < <b>.04</b> – may be inferred that the person was not under the influence of alcohol. § 61-8-401(4) (a) <b>≥.04</b> if operating a CMV §61-8-406(1)(b) <u>Persons Under 21 Years Old-≥.02</u> §61-8-410
Presumption (BAC/BrAC): Types of Drugs/Drugs and Alcohol:	<b>≥.08</b> §61-8-401(4)(c) Under the influence of (1) Any Drug, (2) a Dangerous Drug or (3) Alcohol and Any Dangerous or Other Drug §61-8-401(1)(b), (c) and (d).
Other:	

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law: Implied Consent Law: Arrest Required (Yes/No):	<b>Yes</b> <sup>697</sup> §§61-8-409 and 61-8-806(1)
Implied Consent Law Applies to Drugs (Yes/No): Refusal to Submit to Chemical Test Admitted into Evidence:	<b>Yes</b> §61-8-402(1) Due process requires that a driver be informed of the right to an independent test, which right must not be frustrated or unreasonably impeded by the police. <i>State v. Minkoff</i> , 42 P. 3d 223 (Mont 2002). However, a separate statute stipulates that PBT may be requested on the basis of police officer 'particularized suspicion' of DUI §61-8-409 (1). Refusal is 'sufficient cause' for 'suspension for up to one year'. §61-8-409(4) <b>Yes</b> §61-8-402(1) <b>Yes</b> (Criminal Cases) §61-8-404(2) <sup>698</sup> and <i>Missoula v. Robertson</i> , 998 P. 2d 144 (Mont 2000).

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:	<b>Yes</b> §61-8-402(1)
Urine:	<b>No</b>
Other:	<b>None</b>

<sup>695</sup> This State's illegal per se law also makes it an offense to operate a motor vehicle with either (1) a breath alcohol concentration of .08 or more or (2) a urine alcohol concentration of .08 or more. The .04 alcohol concentration for CMV operators does not apply to urine.

<sup>696</sup> The standards for "alcohol concentration" are (1) grams of alcohol per 100 milliliters of blood or (2) grams of alcohol per 210 liters of breath. §61-8-407

<sup>697</sup> The results of a PBT test may be used as evidence in a drunk driving offense trial. §61-8-404

<sup>698</sup> This provision was held constitutional on both Federal and State grounds. *State v. Jackson*, 672 P.2d 255 (Mont. 1983)

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No** {But a DWI offender is not eligible for pretrial diversion. §46-16-130(4)}

Anti-Plea-Bargaining Statute (Yes/No):

**No**

Pre-Sentencing Investigation Law (PSI)

(Yes/No):

**Yes** Alcohol Screening §61-8-732(2)<sup>699</sup> and <sup>700</sup>Sanctions for Refusal to Submit to a Chemical Test:Refusal to Take a Preliminary Breath Test:

61-8-409 Preliminary alcohol screening test.

Criminal Sanctions (Fine/Jail):

**No**

Administrative Licensing Action

(Susp/Rev):

Suspension up to 1 year §61-8-409(3)

Refusal to Take Implied ConsentChemical Test:

Criminal Sanction (Fine/Jail):

**None**

Administrative Licensing Action

(Susp/Rev):

First Refusal – **Suspension – 6 months** (mand); second or subsequent refusals (within 5 years) – **Revocation – 1 year** (mand). No restricted probationary license can be issued. A peace officer shall seize the defendant's license and forward it to the driver licensing agency. §61-8-402 (5)<sup>701</sup>

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,

Etc.):

- I. Driving While Under the Influence Offenses (misdemeanor)<sup>702</sup> First Offense – 24 consecutive hours to 6 months; second offense (within 5 years) – **7 days to 6 months**; third offense(within 5 years) – **30 days to 1 year**; fourth or subsequent offense(within 5 years) (felony) §§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 and 61-8-734
- II. Illegal Per Se Offenses (misdemeanor) first offense – Not more than **10 days**; second offense (within 5 years) – not less than **5 nor more than 30 days** {the first 5 days may not suspended or be home detention-§ 61-8-722 (2) ; third offense (within 5 years) – **not less than 10 days to 6 months**{the first 5 days may not suspended or be home detention-§ 61-8-722 (3); fourth or Subsequent offense within five years (felony) –

<sup>699</sup> A “chemical dependency assessment” is mandatory for any person convicted (first or subsequent offense) of either driving under the influence of alcohol under §61-8-401 or illegal per se (BAC/BrAC ≥.10) under §61-8-406. §61-8-732(1).

<sup>700</sup> Note: A pre-sentence investigation made if the crime carries a prison sentence of **≥1 year** §46-18-111

<sup>701</sup> Sec. 61-8-402 clearly provides that no restricted probationary license can be issued following suspension/revocation for an implied consent law violation. However, it may be possible to “stay” any licensing action if the person participates in a driver rehab/improvement program. §61-2-302

<sup>702</sup> Imprisonment term can be served in a “facility” other than a jail. §61-8-734(2)

**revocation for a period of 5 years.** A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the last three years may be a restricted license with an interlock ignition. §§61-8-406, 61-8-711(1), 61-8-722, 61-8-731 and 61-8-734 For sentence enhancement purposes, a subsequent offense under either I or II above includes a prior offense of the other. §61-8-734(1)(c)

III. Negligent Vehicle Assault (misdemeanor)<sup>703</sup> **Not more than 1 year** §§45-2-101(41) and 45-5-205(1) and (2)

IV. Negligent Vehicle Assault (felony)<sup>704</sup> – **Not more than 5 years** §§45-2-101(22) and 45-5-205(3)

I. Driving While Under the Influence Offenses: first offense – **24 consecutive hours**<sup>705</sup> must be served in the county jail and cannot be served as "home arrest" (may only be suspended for the defendant's physical and mental well-being); second offense – **3 days 48 consecutive hours** must be served in the county jail and cannot be served as "home arrest" (may not be suspended except for the defendant's physical or mental well-being); third offense – **10 days – 48 hours** must be served consecutively in the county jail and cannot be served as "home arrest"; fourth or subsequent offense <sup>706</sup>(felony) §§61-8-714, 61-8-731 and 61-8-734

II. Illegal per se offenses: first offense – **None**; second and third offenses – **48 consecutive hours** must be served in the county jail and cannot be served as "home arrest"; fourth or subsequent offense (felony) §§61-8-722 , 61-8-731 and 61-8-734

III. Negligent Vehicle Assault (misdemeanor) – **None**

IV. Negligent Vehicle Assault (felony) – **None**

I. Driving While Under the Influence Offenses: first offense – **\$300 to \$1000**; second offense (within 5 years) – **\$600 to \$1000**; third offense (within 5 years) – **\$1000 to \$5,000**; fourth or Subsequent offense within five years (felony) – **\$1,000 to \$10,000**

Mandatory Minimum Term:

Fine Amount (\$ Range):

<sup>703</sup> Negligent Vehicle Assault-A person commits a misdemeanor by causing bodily injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these.

<sup>704</sup> Negligent Vehicle Assault – A person commits a felony by causing serious bodily injury to another person while driving while under the influence of alcohol, a dangerous drug, any drug or any combination of these

<sup>705</sup> The incarceration sanction may be extended up to the maximum allowable for this offense pending the successful completion of a chemical dependency assessment, education or treatment program. However, except for the mandatory term of incarceration, the rest of the incarceration sanction may be suspended for up to 1 year upon the successful completion of these programs. In order to assure compliance with this requirement, the court retains jurisdiction to impose sentence for up to 1 year. §§61-8-714(1), (2) and (3) and 61-8-732(10).

<sup>706</sup> **Subsequent Offense:** The law provides that, for a fourth or subsequent offense, a person must be sentenced to a 13-month term in a residential alcohol treatment program and the prison term of not more than 5 years must be suspended. The suspended prison term is to run consecutively to the residential treatment. It is not clear how much of the 13-month residential treatment term is mandatory. The law provides that this term can neither be deferred nor suspended, and the offender is not eligible for parole. However, the law also states that, if the offender successfully completes the residential treatment program, the remainder of this 13-month term is to be served on probation. §61-8-731(1)(a) and (b)

**MONTANA**

§§61-8-401, 61-8-711(1), 61-8-714, 61-8-731 and 61-8-734

II. Illegal Per Se Offense: first offense – **\$300 to \$1000**; second offense(within 5 years) – **\$600 to \$1,000**; third offense (within 5 years) – **\$600 to \$1,000**; fourth or Subsequent offense within five years (felony) – **\$1,000 to \$5,000** §§61-8-722, 61-8-711(1), 61-8-731 and 61-8-734

III. Negligent Vehicle Assault (misdemeanor) – Not more than **\$1,000** {or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution §46-18-241. §45-5-205(2)}

IV. Negligent Vehicle Assault (felony) – Not to exceed **\$10,000** §45-5-205(3).

Mandatory Min. Fine (\$):

**None**

Other Penalties:

Community Service:

**Yes.** Imposed as part of deferred sentencing. §46-18-201(4)(j).

Restitution

(e.g., Victim's Fund)

**Yes.** (1) If a person has suffered a pecuniary loss as a result of the defendant's illegal actions, the court must order the defendant to pay restitution to such person. A defendant may be ordered to participate in community service if they are financially unable to pay restitution. §§46-18-201(5) and 46-18-241. (2) A victim also can receive compensation from the State's Victims' Compensation Fund. §53-9-101 et seq. (3) Persons convicted of serious bodily negligent vehicle assault shall be ordered to pay restitution as provided in §46-18-241. §45-5-205(2) and (3)

Other:

**Surcharges:** The following surcharges are imposed: for any misdemeanor offense – **\$15**; for any felony offense, **\$20** or 10 percent of the fine imposed whichever is greater; and, in addition, for any drunk driving offense conviction under either §61-8-401 (the regular DWI offense) or §61-8-406( the illegal per se offense at .10) – **\$25**. These surcharges are in addition to any fine sanction. §46-18-236(1)(a), (b) and (c) and (3)

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

§ 61-8-402 License seized immediately by arresting officer –replaced with temporary driving permit effective 12 hours after issuance and valid for 5 days following the date of issuance. {Suspension for 6 months with no provision for a restricted probationary license – § 61-8-402 (6) (a) (i)}

Upon a second or subsequent refusal within 5 years – suspension of 1 year, with no provision for a restricted probationary license. § 61-8-402 (6) (a) (ii)

Other:

Under §§61-5-206 and 61-5-208, a person's license can be suspended for not more than 1 year if involved in an accident resulting in a death, personal injury, or

serious property damage. Such action may be taken without a preliminary hearing.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

All Drunk Driving Offenses<sup>707and708</sup>: first offense – **Suspension**<sup>709</sup>; second offense (within 5 years) – **Suspension**; third and subsequent offense (within 5 years) – **Revocation** Negligent Vehicle Assault – Revocation §§61-5-205(2) and (7) and 61-5-208.

Term of License Withdrawal

(Days, Months, Years, etc.):

All Drunk Driving Offenses: first offense – 1 year; **second offense** (within 5 years) – **1 year**; third and subsequent offense (within 5 years) – **1 year** Negligent Vehicle Assault – 1 year §§61-5-205(2) and (7) and 61-5-208.

Mandatory Minimum Term of

Withdrawal:

All Drunk Driving Offenses:<sup>710</sup> first offense – **None**; second and subsequent offense (within 5 years) – See Footnote Nos. <sup>711</sup>and <sup>712</sup> Negligent Vehicle Assault – **Ignition Interlock: I. Discretionary Action.** For a first offense, via an order, a court may restrict an offender to only operate motor vehicles that are

<sup>707</sup> Includes illegal per se offenses.

<sup>708</sup> Under §61-11-203(2)(d), a person receives 10 points on the driving record for either a regular DWI or an illegal per se offense conviction.

<sup>709</sup> § 61-8-442. Driving under influence of alcohol or drugs – driving with excessive alcohol concentration – ignition interlock device. For a person convicted of a first offense who is granted probation, the court may restrict the person to driving only a motor vehicle equipped with a functioning **ignition interlock** device during the period that the person is granted a probationary license and require the person to pay the reasonable cost of leasing, installing, and maintaining the device. For a second or subsequent violation the court **shall order** that each motor vehicle owned by the person at the time of the offense be either:

(a) seized and subsequentjected to the **forfeiture** procedure provided under 61-8-421; **or**

(b) during the 12-month period beginning with the end of the period of driver's license revocation, equipped with a functioning **ignition interlock device** and require the person to pay the reasonable cost of leasing, installing, and maintaining the device

<sup>710</sup> Includes illegal per se offenses.

<sup>711</sup> A person whose driving privileges are suspended or revoked may be issued a restricted probationary license and have the suspension/revocation action stayed by participating in a driver rehabilitation or improvement program. Persons are eligible to participate in such a program if they meet the following conditions: (1) they are subject to suspension/revocation because of a violation of the traffic laws or (2) they have (i) completed 3 months of a 1 year revocation or (ii), for a second or subsequent drunk driving offense (any type), are in “compliance with the **ignition interlock**” restrictions, or (3) they have completed 1 year of a 3- year revocation. In addition, they must otherwise meet the requirements for "re-obtaining" a driver's license. §§61-5-208(2)(a) and 61-2-302 and Administrative Rules of Montana 23.3.231. A restricted license cannot be issued to allow a person to operate a Commercial Motor Vehicle during any period of disqualification, suspension or revocation. §61-2-302(9)(b).

<sup>712</sup> A court may recommend that a restricted probationary license be issued in lieu of a suspension on the condition that the person attends, if available, an alcohol treatment program. §61-11-101(2) and Administrative Rules of Montana 23.3.231

equipped with "ignition interlock devices" provided the defendant had a blood alcohol concentration  $\geq .18$ .  
**II. Mandatory Action:** For either a second or subsequent offense, a defendant who is issued a "probationary license" is restricted to operating motor vehicles that are equipped with "ignition interlock devices". §61-5-208(2) In addition, for fourth or subsequent offenses, if an offender is permitted to operate motor vehicles as a condition of probation, such vehicles must be equipped with "ignition interlock devices". §61-8-731(3)(h)  
**III.** Licensing action against a person for a drunk driving offense is stayed while participating in the "ignition interlock" program. §61-5-208(3). The duration of this restriction is equal to the period of license suspension or revocation. §61-8-442

Other:  
 Rehabilitation:  
 Alcohol Education:

**Yes First and subsequent offenses –**<sup>713and714</sup>  
**Mandatory** chemical education dependency course.  
 §61-8-732

Under §61-5-208 (2), for second and subsequent offenses (within 5 years), a person's license is revoked for 1 year or until they complete an alcohol education/treatment program whichever is longer.

Alcohol Treatment:

**Yes. First offense –** If an assessment indicates the need, an offender **must** be ordered to take a chemical dependency treatment program. **Second or subsequent offenses –** A chemical dependency treatment program is **mandatory**. §61-8-732.

Vehicle Impoundment/Confiscation:  
 Authorized by Specific  
 Statutory Authority:

**Vehicle Forfeiture.** For a third or subsequent driving while under the influence offense or illegal per se

<sup>713</sup> Driving while under the influence and illegal per se offenses.

<sup>714</sup> For driving while under the influence and illegal per se offenses, a restricted license may be issued on condition that the offender participates in an alcohol education or treatment program. §61-11-101(2)

**Sanctions Against Persons Under 21 Years Old Who are Operating a Motor Vehicle with a BAC/BrAC  $\geq .02$ :** first offense – A fine of not less than \$100 nor more than \$500 and license suspension for 90 days (30 days mand if the offender is <18 years old). **Second offense –** A fine of not less than \$200 or more than \$500; license suspension for 6 months (30 days mand if the offender was <18 years old); and, if the offender was >18 years old, an incarceration term of not more than 10 days. **Third or subsequent offense –** A fine of not less than \$300 nor more than \$500; license suspension for 1 year (30 days mand if the offender was <18 years old); and, if the offender was >18 years old, an incarceration term of not less than 24 con hours nor more than 60 days. In addition to these sanctions, an offender must comply with the chemical dependency education and chemical dependency treatment provisions of §61-8-732. §61-8-410.

**Sanctions Against Persons Under 18 Years Old Who Violate Either the Driving Under the Influence or Illegal Per Se Laws:** Under separate provisions of law, offenders <18 years old are subject to the following sanctions if they operate a motor vehicle either while under the influence of alcohol or drugs or with BAC/BrAC  $\geq .08$  (illegal per se): (1) A fine may be imposed; this fine cannot exceed that which could be imposed on an adult. (2) Their licenses may be suspended/revoked; the period of suspension/revocation is set by the court. And, (3) The vehicle owned by or used by the minor may be impounded for 60 days. An offender <18 years old cannot be incarcerated for these offenses.  
 §61-8-723

offense (within 5 years), the driver's vehicle must be forfeited. §61-8-733

**Vehicle Seizure:** The vehicle of a person convicted of driving with a revoked license due to a DWI conviction must be seized or rendered inoperable for

Miscellaneous Sanctions  
Not Included Elsewhere:

30 days. §61-5-212(3).

**Home Detention:** Except for the initial 24 hours of a first offense<sup>715</sup> or the initial 48 hours of a second or subsequent offense<sup>716</sup>, an offender may be allowed to serve their incarceration term under "home arrest". §61-8-734(3)

**Incarceration Costs:** A defendant may be allowed to serve a term of imprisonment in a non-jail facility such as a prerelease center. Except for fourth or subsequent offenses, an offender, if financially able, must pay the expenses for such alternative incarceration. §61-8-734(2)

Homicide by Vehicle:  
State Has Such a Law:

**No.** But see Footnote No. <sup>717</sup>

Child endangerment:

Penalty for driving under influence of alcohol or drugs – first through third offenses {with one or more passengers under 16 years of age} §61-8-714.

First offense:

Penalty: imprisonment for not less than 48 consecutive hours not more than 20 days and a fine of not less than \$600 or ≤\$2,000. §61-8-714 (1)<sup>718</sup>

Second Offense:

Penalty: not less than 14 days<sup>719</sup> or more than 12 months and not less than \$1,200 or more than \$2,000 §61-8-714 (2).

Third Offense:

Penalty: not less than 60 days<sup>720</sup> or more than 12 months and by a fine of not less than \$2,000 or more than \$10,000 . §61-8-714 (3).

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL):** A person is "suspended" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person either (1) has an "alcohol concentration" ≥.04, (2) is convicted of violating

<sup>715</sup> Driving while under the influence offenses.

<sup>716</sup> Includes all drunk driving offenses

<sup>717</sup> I. Even though this State does not have a vehicle homicide statute, it nevertheless provides for a **1-year** license revocation following a conviction for manslaughter resulting from the operation of a motor vehicle. §61-5-205(1) There is a mandatory revocation period of 3 months. After the mandatory term is over, a probationary restricted license may be issued for the remaining portion of the revocation period if a person complies with the terms of a driver improvement program. §61-2-302(9)

II. If a person commits a reckless driving offense that results in either a death or a serious bodily injury, the following sanctions apply: Imprisonment – not more than **1 year**; Fine – not more than **\$10,000**. §61-8-715(3).

<sup>718</sup> Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

<sup>719</sup> First 5 days of the imprisonment sentence may not be suspended and at least 48 hours must be served consecutively.

<sup>720</sup> First 10 days of the imprisonment sentence may not be suspended, and at least 48 hours of the imprisonment term must be served consecutively.

the drunk driving laws (§§61-8-401 or 61-8-406), or (3) refuses to submit to a chemical test for an alcohol concentration. For a subsequent violation of operating a CMV with an "alcohol concentration"  $\geq .04$ , the "suspension" is for life with 10 years mandatory as may be allowed by Federal regulations. For a subsequent refusal to submit to a chemical test, the "suspension" is for life with 10 years mandatory as may be allowed by Federal regulations. For a second drunk driving offense conviction associated with operating a CMV, the "suspension" is for life except as allowed by Federal regulations. For a third drunk driving offense conviction associated with operating a CMV, the "suspension" is for life (mand). A person who operates a CMV with "any measurable amount or detected presence of alcohol" must be placed "out-of-service" for 24 hours. §§61-1-134, 61-5-208(6), 61-8-805, 61-8-806 and 61-8-811. {A previous violation of the drunk driving laws (§§61-8-401 and 61-8-406) while operating a CMV is considered a prior offense for the purpose of determining license suspension action. §61-8-805(4).}

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:

See Footnotes <sup>721</sup>and <sup>722</sup>

Sanction:

Criminal:

Imprisonment (Term):

**Misdemeanor** – Imprisonment for not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and the court may order the person to perform up to 40 hours of community service .§61-5-212

Mandatory Minimum Term of Imprisonment:

Not less than 2 days.

Fine (\$ Range):

Not more than **\$2,000** §61-5-212

A surcharge of **\$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1)(a) and (3)

Mandatory Minimum Fine:

**None**

Type of Licensing Action (Susp/Rev):

**Suspension or revocation-** (suspension extended for an additional year §§ 61-5-212(2)and 61-2-302 (9) Second offense: required ignition interlock device or vehicle impoundment} § 61-8-733.

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No):

**Yes** §61-11-201 et seq.

Grounds for Being Declared an Habitual Offender:

Accumulation of 30 points in a 3-year period. A DWI offense = 10 points. §61-11-203 (2)

Term of License Rev While Under Habitual Offender Status:

**Revocation 3 years.** If a driver participates in a driver rehabilitation and improvement program, a restricted probationary license may be issued after 1 year of the

<sup>721</sup> **CMV Operators:** I. The sanctions given for driving while suspended or revoked also apply to CDL operators who drive a CMV while their privileges to operate such a vehicle are suspended. §61-5-212 II. A CMV operator who violates an out-of-service order is subject to the following CDL suspensions: first offense – 6 months (mand); second offense (within 10 years) – 1 year (mand); second offense (within 10 years) while transporting hazardous materials or more than 15 passengers-3 years (mand); and, third offense (within 10 years) – 3 years mand. §61-8-812

<sup>722</sup> A first offender who has had license suspended or revoked for any drunk driving offense must have the vehicle owned and operated by that person seized or rendered inoperable for 30 days.

revocation period has passed. §§61-2-302 (2)(a)(ii) and (9), 61-11-211 and 61-11-212

Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Offender Status

**Misdemeanor** §§61-11-201 and 61-11-213

Sanctions Following a Conviction of  
Driving While on Habitual Offender  
Status:

Imprisonment (Term):  
Mandatory Minimum Term of

Not less than **14 days** nor more than **1 year**

Imprisonment:  
Fine (\$ Range):

**14 days**<sup>723</sup>  
Not more than \$1,000  
A surcharge of **\$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1) (a)and (3)  
**None**  
**Yes.** License revocation is extended for an additional period of 1 year. §61-11-213

Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:  
Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic  
Accidents:  
State Has Such a Law (Yes/No):  
BAC Chemical Test Is Given to the  
the Following Persons:  
Driver:  
Vehicle Passengers:  
Pedestrian:

**No**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:

**21**<sup>724</sup> §§16-3-301(3)(a) and (4) and 16-6-305(1) (a) and(b)

Minimum Age (Years) Possession:

**21**<sup>725</sup> §45-5-624(1)(b) There is an employment exemption.

Minimum Age (Years) Consumption:

**21**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No):

**Yes** §27-1-710<sup>726 and 727</sup>

"Dram Shop Law" Concept Has Been

<sup>723</sup> A 14-day jail sanction appears to be mandatory. However, the law is not specific on this point

<sup>724</sup> It is illegal for a minor to knowingly attempt to purchase an "intoxicating substance." §45-5-624(3). It is also a crime for a minor to "misrepresent" age in order to obtain alcoholic beverages. §16-3-301(4)

<sup>725</sup> The law makes it an offense for certain persons to have in their possession an "intoxicating substance." For persons under 21 years old, this includes alcoholic beverages. The law provides that the offense of possession of an alcoholic beverage includes consumption.

<sup>726</sup> Licensees are liable for the injuries caused by patrons who are either under the legal drinking age (i.e., <21 years old) or "visibly intoxicated." Note: The dram shop law also applies to innkeepers. §70-6-513

<sup>727</sup> Under §§16-6-305(4), a person over 21 can be held liable for the tortious actions of a minor if such person sold/gave alcoholic beverages to the minor in an "intoxicating quantity." An "intoxicating quantity" is an amount of alcohol that could produce either (1) a BAC of .05 or more or (2) substantial, visible mental or physical impairment. §16-6-305 (1)(c)

Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

**Yes** *Hehring v. La Counte*, 712 P.2d 1329 (Mont. 1986), and *Bissett v. DMI, Inc.*, 717 P.2d 545 (Mont. 1986) – Abrogated by §27-1-710.

Dram Shop Actions-Social Hosts:

**Yes – Limited** §27-1-710(5) A civil action may not be brought... unless:

- (a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or
  - (b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol.
- (7) In any civil action brought pursuant to this section, the total liability for non-economic damages may not exceed \$250,000; and
- (8) the total liability for punitive damages may not exceed \$250,000.

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Misdemeanor** §§16-3-301(3)(b), 16-6-304, 16-6-314 and 46-18-212

Term of Imprisonment:

Not more than **6 months**

Fine (\$ Range):

Not more than **\$500**<sup>728</sup>Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed \$1,500. §16-4-406(2)(e).

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Suspension or revocation** §16-4-406

Length of Term of License Withdrawal:

This period of suspension may not be more than 3 months; the period of revocation is not specified.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

**Misdemeanor** 16-3-301(3)(a), 16-6-305, 16-6-314 and 46-18-212

Term of Imprisonment:

Not more than **6 months**

Fine (\$ Range):

Not more than **\$500**<sup>729</sup> Note: A civil fine may be assessed by the licensing agency and such fine is not to exceed \$1,500. §16-4-406(2) (e).

Administrative Actions Against Owners of Establishments That Serve Alcoholic

<sup>728</sup> A surcharge of **\$15** is imposed. This surcharge is in addition to any fine sanction. §46-18-236(1) (a) and (3)

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Beverages to Those Persons Under the Minimum Legal Drinking Age:  
 License to Serve Alcoholic Beverages Withdrawn (Yes/No):  
 Length of Term License Withdrawal:

**Yes. Suspension or revocation** §16-4-406  
 The period of suspension may not be more than 3 months; The period of revocation is not be specified in the statute.

Anti-Happy Hour Laws/Regulations:  
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

**No**

Open Container Law (Yes/No):

**Limited Driver and passengers**<sup>730</sup> §16-3-106(2)

Anti-Consumption Law (Yes/No):

**Limited Driver and passengers** §16-3-106(2)

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<sup>730</sup> The statute is as follows: (1) Except as provided in subsection (2), 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. (2) This section does not apply to an open alcoholic beverage container:

- (a) in a locked glove compartment or storage compartment;
  - (b) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;
  - (c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;
  - (d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or
  - (e) in the immediate possession of a passenger:
    - (i) of a motor vehicle, including a bus, taxi, or limousine, that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or
    - (ii) in the living quarters of a camper, travel trailer, or motor home.
- (3)(a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed \$100.
- (b) A violation of this section is not a criminal offense...and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation.