



Montana Law Enforcement Academy
Peace Officer and Agency
2021 Legislative Update

FOREWORD

The purpose of this document is to provide Montana law enforcement agencies and their officers with relevant information and changes resulting from the 2021 Montana Legislative session. Every effort has been made to include those laws which directly impact law enforcement operations. Not all laws mentioned will directly affect law enforcement operations, but may impact some other area, or are of general interest. Questions regarding any of the new laws, or revisions to existing laws may be directed to David Ortley, Assistant Attorney General, at the Montana Law Enforcement Academy (david.ortley@mt.gov). Academy training staff will not be scheduling regional legislative update briefings; however, update briefing requests may be entertained upon request if academy scheduling permits.

THE 2021 SESSION

The session was not highlighted by major efforts to change existing provisions of the criminal code, or the rules of criminal procedure. The substantive law changes were addressed to increased penalties, restrictions on suspended sentences, and compensation and treatment of victims.

The recreational marijuana constitutional initiative (I-190), and the constitutional right to carry initiative, have understandably caused concern in the law enforcement community. The 2021 Session radically changed the long-standing concealed weapon statute, and now the right to carry concealed, without a permit, is clearly expressed in law. Further, municipalities are prohibited from restricting the constitutional right to carry. A concealed carry permit now has the effect of allowing concealed carry in certain public buildings whereas a person without a permit may not carry concealed in those places.

The Department of Revenue is tasked with drafting administrative rules implementing the recreational marijuana initiative and associated commercial program. The statutory provisions are pervasive and complicated. Full coverage and understanding are left to other publications and training opportunities. It is important that agencies and officers proactively obtain relevant training.

ORGANIZATION

The various House and Senate bills are summarized in topical areas and reference the existing statutes effected or created by the passage of the legislation. Key subject matter words are highlighted.

Crimes

Concealed Weapons-

Legislative Referendum 130 was passed in the fall of 2020 and resulted in the enactment of House Bill 102 which resulted in a clear statement that Montana citizens who are not otherwise prohibited from doing so, have a right to **openly carry weapons** and may warn of the use of a weapon when threatened with bodily injury. This includes drawing a weapon.

Similarly, a person not otherwise permitted to carry a weapon may carry a weapon concealed, without a permit to do so, anywhere in the State except for specified public and federal buildings. Those who obtain a permit to carry concealed may carry weapons concealed in most public buildings. Local authorities are prohibited from interfering with or infringing upon the right to carry weapons other than in buildings owned by the local authority. A cause of action is created for a deprivation of rights under the new law.

This law limits the Board of Regents from prohibiting or placing an undue burden on the exercise of the right to carry. The ability of the Regents to regulate weapons is the subject of significant debate. **Campus agencies and officers are encouraged to consult their respective prosecuting authority for guidance.**

Sections effected by the law are: 45-3-111, 45-8-316, 45-8-328, 45-8-351. 45-8-317 and 45-8-339 are repealed. Effective June 1, 2021.

HB-258 created the **“Montana Federal Firearm, Magazine, and Ammunition Ban enforcement Prohibition Act.”** Based on both federal and state constitutional provisions, the Act prohibit peace officers, and any other state or local government employees, from participating in, or spending public funds or resources on implemented a federal ban on firearms, magazines, or ammunition. Effective April 23, 2021. 45-8-365, MCA.

Assault on a Peace Officer-

SB-220 added a new felony provision for assault on a peace officer with what “reasonably appears” to be a weapon and provides for a 10 year/50,000 penalty. Amends 45-5-210. Effective October 1, 2021. 45-5-210, MCA.

Driving Impaired-

HB-478 (See also SB-365) this bill now includes breath testing costs in a special revenue fund for forensic analysis. This bill is a part of a larger change in implied consent blood draw warrants. Amends 61-8-402. Effective October 1, 2021.

Driving Impaired- Felony-

HB 115 increases the penalties for 5th and subsequent felony driving while impaired and prohibits deferral of sentences. Amends 61-8-731. Effective October 1, 2021, and applies to violations after that date. See SB-365

Driving Under the Influence-

SB 365 is an extensive reorganization of Title 61, Section 8, and the laws related to driving under the influence. This law is effective January 1, 2022. Former sections 61-8-401 through 61-8-411 are repealed and will be replaced by nearly identical provisions that will appear as subsections on a new Driving Impaired section. The new sections are structured to restate existing law in a more readable fashion, to incorporate the allowable limits of THC, the other significant change is the inclusion of most definitions in an introductory section rather than throughout Title 61. **The newly organized DUI laws will begin at 61-8-1001, MCA.**

At the time of this update legislative Services has not printed updates to Montana Code Annotated reflecting the assigned new section numbers for the previous DUI laws. The material is on-line: <https://leg.mt.gov/statute/>

It is critical that peace officers consult the new law when charging offenses after December 31, 2021.

The scope of the bill is demonstrated by the following list of existing laws which are repealed and replaced by the new version:

Section 44. Repealer. The following sections of the Montana Code Annotated are repealed:

61-8-401. Driving under influence of alcohol or drugs -- definitions.

61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.

61-8-403. Right of appeal to court.

61-8-404. Evidence admissible -- conditions of admissibility.

61-8-405. Administration of tests.

61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.

61-8-407. Definition of alcohol concentration.

61-8-408. Multiple convictions prohibited.

61-8-409. Preliminary alcohol screening test.

61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.

61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta9-tetrahydrocannabinol.

61-8-421. Forfeiture procedure.

61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.

61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.

61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.

61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.

61-8-461. Definitions.

61-8-465. Aggravated DUI.

61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.

61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.

61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.

61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

Fish and Game-

HB-108 modifies the failure to obtain landowner permission statute by making it applicable to all persons, by including furbearers within “hunting,” and by expanding those from whom permission may be gained to agents and lessees. Amends 87-6-415. Effective March 26, 2021, and applies only to violations after that date.

HB-152 expands the definition of “drain plug” and requires removal at the launch site or draining and drying the compartments holding water. The revision adds a provision which prohibits a peace officer from initiating a stop for this offense as a primary basis of the stop. It further allows for an on-the-spot correction (compliance) of the violation so long as the correction does not impact state waters. Amends 80-70-1003, 80-70-1010, 80-70-1015, and 80-70-1019. Effective October 1, 2021, and applies to violations charged after that date.

Illegal Possession of Firearms-

HB-333 creates the offense of unlawful possession of a firearm by a registered (or required to) sexual or violent offender. Amends 45-8-313. Effective October 1, 2021

Sexual Assault-

HB-520 created good Samaritan protection for a person engaged in prostitution when they report the prostitution in conjunction with the offense of sexual assault or sexual intercourse without consent. Amended 50-32-609. Effective October 1, 2021.

Trespass-

HB-501 provides that it is not criminal trespass for a person to fail to wear a mask or face covering or fail to provide proof of vaccination in a “public place” which is funded in any amount by taxpayer funds. Amends 45-6-203. Effective May 14, 2021.

Traffic Related-

HB-264 clarifies the offense of reckless endangerment of emergency personnel by including tow trucks and the presence of signs advising of accidents and emergency scenes. Clarifies driver's required course of action. The bill also adds a suspension of commercial driving privileges for a conviction of the offense. Amends 61-8-346, 61-8-715, and 61-8-803. Effective October 1, 2021.

SB-9 provides for "lane filtering" by two wheeled motorcycles. The bill contains a maximum speed of 20 mph, and no more than 10 mph over the speed of the stopped or slow-moving vehicles and includes a "reasonable and prudent" operation under all conditions. Effective October 1, 2021. 61-8-392, MCA.

Unlawful Transactions with Children-

HB-105 adds to the prohibitions selling or giving to a minor tobacco product, alternative nicotine products, or vapor products. Amends 45-5-623. Effective March 23, 2021.

Criminal Justice Information-

HB-559 provides a process for a county attorney to bring a declaratory judgment action to seek permission to disseminate confidential criminal justice information if the disclosure may be in the public interest. Significant victim notification provisions are included along with the right to object and seek an in-camera review to weigh the right to privacy against the merits of disclosure. Amends 44-5-303. Effective October 1, 2021.

HB-665 modifies the Confidential Criminal Justice Information Act by including investigative fingerprints and photographs within the definition of confidential criminal justice information. The bill also requires that an agency charge a "clerking fee" against a defendant whose photograph is taken, and disseminated, prior to termination of the proceedings. The fee may be waived and cannot be charged if the person is convicted. Amends 44-5-103 and 301.

Criminal Procedure-

HB-449 greatly expands alcohol monitoring as a condition of **pre-trial release** and creates a "presumption" that alcohol and/or electronic monitoring is required in felony level crimes stemming from domestic violence. Amends 45-9-108. Effective July 1, 2021.

HB-451 includes time in a residential treatment facility when calculating credit for time served prior to sentencing. Amends 46-18-403. Effective October 1, 2021.

HB-539 broadens the hiring of special counsel by a county attorney in cases of child sexual abuse or child sexual exploitation. It also increases the reporting obligation of the Department of Public Health and Human Services by requiring reporting of suspected sexual crimes by children 12 years or older. Finally, the bill changes the annual reporting requirement for these crimes and the reporting requirement of the attorney general. Amends 7-4-2705, 41-3-202, and 41-3-210. Effective October 1, 2021.

HB-553 amends the sentencing provisions of the Rules of Criminal Procedure by imposing limits on the amount of time a person may be supervised in the community under a suspended sentence. The shortest time is 5 years. The restrictions do not apply if restitution exceeds \$50,000. Amends 46-18-201. Effective October 1, 2021, and applies to crimes committed after that date.

HB-91 modifies the violent offender registry provisions by providing for automatic relief and lifetime registration for those convicted of failing to register during the statutorily mandated period. The new law also provides removal from the registry after successful registration and the vacating of convictions obtained for failing to register under prior law. Amends 46-23-506 and 46-23-507. Effective October 1, 2021.

HB-211 provides for compensation benefits for the parents or guardian of a minor who is the victim of “criminally injurious conduct” involving a sexual offense. The compensation is limited to \$5,000 or twelve months and cannot be claimed if the person is entitled to compensation under the Victim Compensation statutes found in title 41, Chapter 3. Amends 53-9-128. Effective October 1, 2021.

HB-310 expands the rights of the victims of sexual assault to include the right to know the status of the sexual assault evidence kit. Amends 46-15-406. Effective October 1, 2021.

Dangerous Drugs-

HB-701/CI-190 amends those provisions of Title 45 relating to possession and distribution to reflect that the amounts allowable under the **Montana Regulation and Taxation Act (Recreational Marijuana)** are no longer criminal offenses.

Amounts in excess of the permissible amounts are charged under Title 45, Chapter 9, as modified. This bill amends 70 sections of Montana Code Annotated. Effective dates vary: January 1, 2022, May 18, 2021, and July 1, 2021.

HB-517 this bill amends a section in the new recreational marijuana laws (I-190) by eliminating the civil fine of \$200.00 or 8 hours of counseling. Violations by those under 21 remain criminal offenses. Amends 16-12-106, 45-5-624. Effective April 26, 2021.

HB-391 provides a new penalty of up to 100 years in prison and a fine up to \$100,000.00 for distribution of dangerous drugs resulting in death. Amends 45-9-101. Effective October 1, 2021.

Montana Board of Crime Control-

HB-28 eliminated the requirement that the MBCC hear appeals from decisions of the POST Council. Amends 44-4-404 and 44-7-101. Effective July 1, 2021.

Peace Officers-

SB-220 added a new felony provision for assault on a peace officer with what “reasonably appears” to be a weapon and provides for a 10 year/50,000 penalty. Amends 45-5-210. Effective October 1, 2021.

HB-144 eliminated criminal penalties for officers who fail or refuse to render assistance to a state or local health official. Amended 50-2-120. Effective March 26, 2021. Same bill as SB-67.

HB-223 created a new law which requires a peace officer in possession of an immigration detainer to arrest a person already in custody and comply with requests made by the federal government. The detention may not last longer than 48 hours, excluding weekends. Effective October 1, 2021. 27-16-801, MCA.

HB-243 expanded those who may serve as “officers of court” in cities having a municipal court. The Chief may now utilize reserve officers to fill this role. Amended 3-6-303, 7-32-201. Effective April 4, 2021.

HB-386 allows auxiliary officers to carry firearms on official search and rescue missions with prior approval of the sheriff. Amended 7-32-232. Effective October 1, 2021.

Medical and Recreational Marijuana-

HB-655 provides that an individual discharged from employment for failure to take, pass, or refusing to take, a drug test pursuant to policy may not be denied unemployment benefits if they are a registered medical marijuana card holder.

The bill also provides that the refusal to test, or the failure of a test, creates a presumption that the work-related injury was caused using drugs not prescribed by a physician. Both provisions require compliance with federally approved testing procedures. Amends 39-51-2303, 39-71-407. And 50-46-303. Effective July 1, 2021.

Constitutional Initiative 190- Montana Regulation and Taxation Act (Recreational Marijuana)- Summary for peace officers.

CI-190 is a comprehensive bill (67 pages) which must be read to understand its intent, and impact. For peace officers, the major change, and policing impact, is the legal possession and cultivation of small amounts of marijuana, marijuana products, and associated paraphernalia. Violations of provisions related to small amounts are the responsibility of the Department of Revenue. Possession of larger amounts, and distribution of larger amounts of marijuana remain criminal offenses under Title 45.

HB-701 is the resulting companion legislation (151 pages) implementing the regulation and taxation of legal marijuana. As with CI-190 this bill must read in its entirety to understand the status of legal cultivation, use, and distribution of legal recreational marijuana.

The following is a summary of the key provisions under both laws, and the important ramifications for peace officers in performance of their duties. If in doubt consult your prosecuting authority for guidance.

THE LEGAL PERSONAL POSSESSION, USE, and CULTIVATION OF RECREATIONAL MARIJUANA MAY NOT BE THE BASIS TO DETAIN, SEARCH, or ARREST, or otherwise deny any right or privilege, or to seize or forfeit assets of a person 21 or older.

Legal Personal Use, Possession, and Cultivation:

A person over 21 may possess, purchase, obtain, use, ingest, inhale, and transport up to **1 ounce** of marijuana, but no more than 8 grams may be in concentrated form. An edible product may not contain more than 800 milligrams of THC. (See HB-701)

In or on the grounds of a private residence a person may possess, grow, or cultivate up to 2 mature plants, and 2 seedlings. Registered cardholders may possess up to 4 mature plants and grow 4 seedlings. Plants must be in a locked space and may not be visible with the unaided eye from a public place.

No more than twice the legal number of plants may at a private residence. Plants may not be cultivated in public view.

Users may not possess, or consume marijuana or products in a number of public and private places, including motel rooms.

Users may not consume/use marijuana while operating or while in physical control of motor vehicles. Passengers may not possess/consume while in the “passenger seat” of a motor vehicle. It is unclear if that means both front and rear passenger seats.

Plants and the product of plants must be stored in a locked space in one private residence. No more than twice the number of allowed plants may be cultivated at a residence. The user must own the residence or have written permission of the owner. The residence cannot be shared, rented, or leased to adult use providers.

A person may not be arrested or prosecuted for any offense solely for being in the presence or vicinity of marijuana use or the use of infused products.

A person previously convicted of an act now lawful may petition for expungement or resentencing.

Violations- Many violations of the Act are civil in nature and are under the authority of the Department of Revenue.

If the Act doesn't set forth a penalty, then the conduct which is not allowed under the act may charged under the provisions of Title 45, Chapter 9. For example, more than 2 ounces of marijuana and more than 8 oz of concentrate.

While recreational use of marijuana, and infused products, are soon to be legal, those fact do not mean the presence or use of marijuana is not relevant to peace officers in preventing or investigating crime. Montana peace officers should strive to be familiar with the provisions of the Act so that they are able to focus on conduct that has not been legalized and remains a legitimate community concern.