

# Blood Warrant and Agg. DUI Quick Cards for LEO (1.19.23)

A Montana TSRP Training Document

# Quick Cards:

On the two pages below, you will find an easily printable "Quick Card" for law enforcement. These Quick Cards are intended to be printed double-sided, laminated, and kept for easy reference in the field.

# **Topics in this Quick Card:**

One side displays the requirements for a DUI Blood Search Warrant. The reverse side displays the circumstances when law enforcement may charge Aggravated DUI or a DUI with Enhanced Penalties (Previously Agg. DUI 61-8-465(1)(e)(2019)).

Note: When charging Aggravated DUI or DUI with Enhanced Penalties, LEO should be mindful to cite both the specific DUI subsection and the Aggravated or Enhanced Penalty statutes.

For example:

Suspect committed the offense of Driving Under the Influence,  $1^{st}$  offense, in violation of MCA § 61-8-1002(1)(a), Aggravated, MCA § 61-8-1001(1).

Suspect committed the offense of Driving Under the Influence,  $1^{st}$  offense, in violation of MCA § 61-8-1002(1)(c), with enhanced penalties, per MCA § 61-8-1007(1)(c).

# **Contact for Additional Details:**

Montana Attorney General's Office Prosecution Services Bureau Traffic Safety Resource Prosecutor Ed Hirsch (406) 414-7029 Edward.Hirsch@mt.gov



Requirements for **DUI Blood Search Warrant** (all required):

- 1. Prob. cause & arrest for DUI <u>or</u> in fatal crash (fault irrelevant).
- 2. Driver refused officer's request after implied consent.
- Driver has prior refusal, <u>or</u>; pending or prior DUI, Agg. DUI, Neg. Homicide, Neg. Vehicular Assault, Vehicular Homicide While Under the Influence, <u>or</u>; if this is a fatal crash, search warrant may be written for Negligent Homicide without prior refusal/conviction – all other reqs. still apply.
- 4. Must record judge's call, under oath, officer signs for self and judge then initials over judge's "signature", provide judge with original recording, transcript, and get judge's real sig. ASAP.
- 5. Use same blood kit and paperwork as DUI blood draw.

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# Agg. DUI, 61-8-1002(1)(a, b, c, or d) & 61-8-1001(1) UVC 5107:

- BAC via Intoxilyzer or Blood is 0.16 or higher, <u>or:</u>
- Is under court or DMV order to have interlock, <u>or:</u>
- Driver's license currently suspended/revoked/cancelled for prior DUI/Agg DUI conviction, <u>or:</u>
- Refuses to provide breath/blood sample AND license is currently suspended for refusal.

#### DUI w/ Enhanced Penalty 61-8-1002(1)(a) & 61-8-1007(1)(c) or 61-8-1002(1)(b, c, or d) & 61-8-1007(2)(c):

- DUI under 61-8-1002(1)(a, b, c, or d), AND;
- Has a pending Montana DUI or Agg DUI, or Agg DUI from any other state (Rare).

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