

Montana Annotated Code 2009 Definitions

61-8-401. Driving under influence of alcohol or drugs -- definitions. (1) It is unlawful and punishable, as provided in [61-8-442](#), [61-8-714](#), and [61-8-731](#) through [61-8-734](#), for a person who is under the influence of:

- (a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;
- (b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
- (c) any other drug to drive or be in actual physical control of a vehicle within this state; or
- (d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) (a) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(b) Subject to [61-8-440](#), as used in this part, "vehicle" has the meaning provided in [61-1-101](#), except that the term does not include a bicycle.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood or breath drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(6) Each municipality in this state is given authority to enact [61-8-406](#), [61-8-408](#), [61-8-410](#), [61-8-714](#), [61-8-722](#), [61-8-731](#) through [61-8-734](#), and subsections (1) through (5) of this section, with the word "state" in [61-8-406](#) and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties provided in the ordinance.

(7) Absolute liability as provided in [45-2-104](#) will be imposed for a violation of this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(part); amd. Sec. 69, Ch. 421, L. 1979; amd. Sec. 2, Ch. 659, L. 1983; amd. Sec. 5, Ch. 698, L. 1983; amd. Sec. 2, Ch. 99, L. 1985; amd. Sec. 2, Ch. 350, L. 1987; amd. Sec. 3, Ch. 484, L. 1987; amd. Sec. 1, Ch. 612, L. 1987; amd. Sec. 1, Ch. 789, L. 1991; amd. Sec. 2, Ch. 88, L. 1997; amd. Sec. 6, Ch. 107, L. 1997; amd. Sec. 4, Ch. 512, L. 1997; amd. Sec. 2, Ch. 525, L. 1997; amd. Sec. 4, Ch. 563, L. 2001; amd. Sec. 3, Ch. 329, L. 2003; amd. Sec. 207, Ch. 542, L. 2005.