



Montana Legislative Services Division
Legal Services Office

MEMORANDUM

To: Law and Justice Interim Committee
From: Julianne Burkhardt, Staff Attorney
Re: Committee Questions regarding Montana Marijuana Act
Date: April 17, 2012

1. If a law enforcement officer pulls over a vehicle for a suspected vehicle code violation and after observing the driver suspects that the driver is under the influence of marijuana and the driver is a registered cardholder, is the driver violating any law?

The short answer is yes, assuming the officer can gather the appropriate proof. Section 61-8-401(1)(b), MCA, provides that it is unlawful for a person who is under the influence of "a dangerous drug to drive or be in actual physical control of a vehicle. . ." In addition, 61-8-401(2), MCA, provides even though a person may be legally entitled to use alcohol or a drug, that is not a defense to prosecution. The Montana Marijuana Act at 50-46-320(1), MCA, also does not permit a registered cardholder to operate a motor vehicle while under the influence of marijuana. Further, the provisions of 50-46-320(7)(b), MCA, provide, in essence, that a person convicted of driving under the influence is subject to revocation of the registry card. Incidentally, 50-46-320(7)(a), MCA, also permits an officer who suspects someone is driving under the influence of marijuana to request a search warrant to obtain a sample of the person's blood for testing. Notwithstanding this procedure, the provisions of Montana's Implied Consent law at 61-8-402, MCA, state that by operating a vehicle on the roads of Montana all drivers have consented to a blood or breath test and a refusal results in a driver's license suspension. An implied consent refusal is technically a civil matter, but I think it is relevant because it deals with the potential consequences of driving under the influence of drugs or alcohol in Montana.

2. Does the registered cardholder have to carry the card at all times?

The answer to this question is yes. Pursuant to 50-46-317, MCA, registered cardholders are required to carry the registry card at all times.

3. What are the ramifications/implications if the registered cardholder cannot immediately produce the card?

Section 50-46-330, MCA, addresses unlawful conduct by cardholders and penalties. If a person violated 50-46-317, MCA, by failing to have the registry card with them when they were pulled over by law enforcement, they could be subject to the misdemeanor penalty provided in 50-46-330(2), MCA, which states: "A registered cardholder, provider, or marijuana-infused products provider who violates this part is punishable by a fine not to exceed \$500 or by imprisonment in a county jail for a term not to exceed 6 months, or both. . ."