

Montana Supreme Court, Office of Court Administrator
Summary Statewide DUI Data Report (January 2008 – December 2009)
January 21, 2010

Introduction & Methodology

This report provides summary information on driving under the influence (DUI) and related charges filed in Montana courts¹ after January 1, 2008. The tables in this report are based on charge information extracted from the court central data repository – a database of cases and charges filed² in Montana courts of limited jurisdiction (COLJ) and district courts. The court central data repository is maintained by the Office of Court Administrator.

In this report, a DUI charge is any charge filed under 61-8-401, MCA - **Driving Under the Influence of Alcohol**, 61-8-406, MCA - **Operating with Alcohol Concentration of 0.08% BAC or Greater**, and 61-8-410, MCA - **Operating with Alcohol Concentration of 0.02% BAC under 21 years of age**. These charges were examined in an attempt to answer the following questions posed by legislative services staff.

1. How many and what specific DUI charges³ are filed in Montana courts?
2. How many DUI charges are amended after the initial filing of the DUI charge?
3. If reported, what is the average BAC (blood-alcohol concentration) level for each DUI-related offense?
4. What is the typical disposition (conviction, acquittal, dismissal, deferral) of a DUI charge in Montana?

Charges Filed

How many and what specific DUI charges are filed in Montana courts?

Between January 1, 2008 and December 31, 2009, 18,553 DUI-related charges were filed in Montana courts between January 1, 2008 and December 31, 2009. Of these charges, 17,071 (92%) were filed in courts of limited jurisdiction and 1,481 of the charges (8%) were filed in district courts.

¹ Cases for the Teton County Justice Court are not included in the report

² Felony DUI's are included in COLJ counts only if the felony charge was amended to a misdemeanor and the case adjudicated in the court of limited jurisdiction.

³ Not infrequently, a prosecutor will file charges under both 61-8-401 and 61-8-406, MCA, and will dismiss one charge upon a conviction of the other. Only one charge per case was allowed with the charge resulting in a conviction retained when possible.

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Table 1 below lists DUI-related charges as originally filed in Montana courts of limited jurisdiction and district courts.

Table 1: DUI Related Charges Filed in Montana Courts (January 1, 2008 - December 31, 2009)

Statute	Description	COLJ	District Courts
61-8-401(1)(a) [1st]	Driving Under the Influence of Alcohol - First	11425	359
61-8-401(1)(a) [2nd]	Driving Under the Influence of Alcohol - Second	2409	77
61-8-401(1)(a) [3rd]	Driving Under the Influence of Alcohol - Third	586	34
61-8-401(1)(a) [4th+]	Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	49	898
61-8-401(1)(b) [1st]	Driving Under the Influence of Any Drug (Narcotic, etc.) - First	160	10
61-8-401(1)(b) [2nd]	Driving Under the Influence of Any Drug (Narcotic, etc.) - Second	15	
61-8-401(1)(b) [3rd]	Driving Under the Influence of Any Drug (Narcotic, etc.) - Third	8	1
61-8-401(1)(b) [4th+]	Driving Under the Influence of Any Drug (Narcotic, etc.) - Fourth		12
61-8-401(1)(c) [1st]	Driving Under the Influence of Non-Narcotic Drug - First	25	1
61-8-401(1)(c) [2nd]	Driving Under the Influence of Non-Narcotic Drug - Second	1	
61-8-401(1)(c) [3rd]	Driving Under the Influence of Non-Narcotic Drug - Third	1	1
61-8-401(1)(c) [4th+]	Driving Under the Influence of Non-Narcotic Drug - Fourth		2
61-8-401(1)(d) [1st]	Driving Under the Influence of Alcohol and Drugs - First	79	3
61-8-401(1)(d) [2nd]	Driving Under the Influence of Alcohol and Drugs - Second	23	3
61-8-401(1)(d) [3rd]	Driving Under the Influence of Alcohol and Drugs - Third	4	
61-8-401(1)(d) [4th+]	Driving Under the Influence of Alcohol and Drugs - Fourth	5	11
	DUI Subtotal	14790	1412
61-8-406(1)(a) [1st]	Operating with Alcohol Concentration of 0.08% BAC or Greater - First	1455	37
61-8-406(1)(a) [2nd]	Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	166	6
61-8-406(1)(a) [3rd]	Operating with Alcohol Concentration of 0.08% BAC or Greater - Third	42	1
61-8-406(1)(a) [4th]	Operating with Alcohol Concentration of 0.08% BAC or Greater - Fourth		21
	BAC Subtotal	1663	65
61-8-406(1)(b) [1st]	Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First	25	
61-8-406(1)(b) [3rd]	Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - Third	1	
	Commercial Subtotal	26	
61-8-410(1) [1st]	Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	572	4
61-8-410(1) [2nd]	Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second	20	
	BAC Under 21 Subtotal	592	4
Grand Total	DUI Charges Filed January 1, 2008 - December 31, 2009	17071	1481

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Amended Charges

How many DUI charges are amended after the initial filing of the DUI charge?

Between January 1, 2008 and December 31, 2009, 18,553 DUI-related charges were filed in Montana courts. Of these charges, 14,538 (78%) have been disposed. Of the 14,538 disposed charges 4,942 (34%) were amended after the initial filing of the DUI charge. Most commonly the charge was amended to a different DUI charge, e.g., a charge filed under 61-8-401 (generic DUI) is amended to a charge under 61-8-406 (specific BAC). DUI-related charges were amended to a non-DUI charge in 12% of the cases.

Table 2 below provides a summary of charge counts, overall percentage and a description of the most common amending charge.

Table 2: Amended Statute Summary

Amended Statute Summary	Charge Count	Percent
Total DUI Charges Disposed (January 1, 2008 – December 31, 2009)	14538	100%
Number of DUI charges amended from original DUI charge.	4942	34%
Types of Charges Amended		
Number of DUI charges amended to a different DUI charge <i>The most common DUI charge amended to a different DUI charge was amending 61-8-401(1)(a)[1st] Driving Under the Influence of Alcohol – First to 61-8-406(1)(a)[1st] – Operating with Alcohol Concentration of 0.08% BAC or Greater – First – 2296 amended charges</i>	3136	22%
Number of DUI charges amended to a non-DUI criminal offense. (Title 45) <i>DUI charge amendments to a criminal charge were most commonly to 45-5-208 Negligent Endangerment – 827 amended charges</i>	876	6%
Number of DUI charges amended to non-DUI traffic offense (Title 61) <i>DUI charge amendments to a non-DUI traffic charge were most commonly to 61-8-301(1)(a) Reckless Driving – 833 amended charges.</i>	930	6%

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Blood Alcohol Concentration (BAC)

If reported, what is the average BAC (blood-alcohol concentration) level for each DUI-related offense?

Some Montana courts record the blood alcohol concentration (BAC) level of the defendant if provided to the court. Of the 18,553 DUI-related charges filed in Montana courts during the period between January 1, 2008 and December 31, 2009, the BAC was recorded in 4,806 cases (26%). **Table 3** below provides the average BAC for each DUI-related offense and the number of cases used to calculate the average. **Table 4** on the following page provides a ranking of the highest average BAC by violation.

**Table 3: BAC levels recorded for defendants in DUI-related cases charged in Montana Courts
 January 1, 2008 - December 31, 2009 classified by violation**

DUI/BAC Violations	AVG BAC	# Cases
Commercial	0.081	10
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First	0.081	10
First Offense	0.159	3820
Driving Under the Influence of Alcohol - First	0.161	3155
Driving Under the Influence of Alcohol and Drugs - First	0.191	4
Driving Under the Influence of Any Drug (Narcotic, etc) - First	0.151	2
Operating with Alcohol Concentration of 0.08% BAC or Greater - First	0.150	659
Second Offense	0.175	621
Driving Under the Influence of Alcohol - Second	0.175	536
Driving Under the Influence of Alcohol and Drugs - Second	0.141	4
Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	0.175	81
Third Offense	0.182	123
Driving Under the Influence of Alcohol - Third	0.182	108
Operating with Alcohol Concentration of 0.08% BAC or Greater - Third	0.197	15
Fourth or Subsequent Offense	0.197	14
Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	0.197	14
Under 21 - First Offense	0.078	209
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	0.078	209
Under 21 - Second Offense	0.072	9
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second	0.072	9

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Table 4: BAC Ranking (Highest to Lowest) of Court Recorded BAC

Rank (Highest to Lowest)	DUI/BAC Violation	AVG BAC	# Cases
1	Fourth or Subsequent Offense	0.197	14
2	Third Offense	0.182	123
3	Second Offense	0.175	621
4	First Offense	0.159	3820
5	Commercial DUI Offense	0.081	10
6	Under 21 - First Offense	0.078	209
7	Under 21 - Second Offense	0.072	9

Dispositionⁱ of DUI-related Charges

What is the typical disposition (conviction, acquittal, dismissal, deferred) of a DUI case in Montana?

Between January 1, 2008 and December 31, 2009, 14,538 DUI-related charges were filed and disposed in Montana Courts. Of these disposed charges, 12,732 (88%) were DUI specific charges. **Table 5** below lists the final DUI specific charge and the disposition. For the purposes of this report, a conviction is finding of guilty regardless of whether the finding of guilt was established through a plea, bench trial or jury trial. An acquittal is a specific finding of not guilty by a judge or a jury. A dismissal is a dismissal of the charge by the prosecutor or judge prior to a finding of guilty or not guilty. A deferral is a prosecutor action and does not include a deferred imposition of sentence. Deferred impositions of sentence (125 charges) were counted as a conviction for this report.

Table 6 beginning on page 6 lists the final disposition for all 14,538 DUI-related charges and amended charges.

Table 5: DUI-specific charges and manner of disposition - January 1, 2008 - December 31, 2009

Final Disposition DUI/BAC Charges	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
DUI/BAC - 1 st Offense	63	8660	24	769	9516	91.0%
DUI/BAC - 1st – Commercial Offense		19		4	23	82.6%
DUI/BAC - 1st Under 21 Offense	1	581	8	52	642	90.5%
DUI/BAC - 2 nd Offense	17	1472	3	183	1675	87.9%
DUI/BAC - 2nd – Commercial Offense		1			1	100.0%
DUI/BAC - 2nd Under 21 Offense		15		1	16	93.8%
DUI/BAC - 3 rd Offense	1	302	1	79	383	78.9%
DUI/BAC - 4th or Subsequent Offense	1	419	2	54	476	88.0%
Total DUI Charge Dispositions	83	11469	38	1142	12732	90.1%
Disposition Percentage	0.7%	90.1%	0.3%	9.0%		

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Table 6: Final Disposition of DUI Charges filed/amended - January 1, 2008 - December 31, 2009

Final Disposition DUI/BAC Charges as Amended	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
Criminal Total		842	4	30	876	96.1%
Assault with a Weapon - Felony				1	1	0.0%
Criminal Endangerment - Felony		27			27	100.0%
Criminal Mischief		1		1	2	50.0%
Criminal Possession of Dangerous Drugs - Marijuana (Less than 60 grams)		1			1	100.0%
Disorderly Conduct		1			1	100.0%
Negligent Endangerment		795	4	28	827	96.1%
Negligent Vehicular Assault (Bodily Injury) - Misdemeanor		1			1	100.0%
Obstructing a Peace Officer or Other Public Servant		2			2	100.0%
Possessing Intoxicating Substances while under the age of 21 (Over 18)		8			8	100.0%
Possessing Intoxicating Substances while under the age of 21 (under age 18) - First		6			6	100.0%
DUI/BAC - 1st Totals	63	8660	24	769	9516	91.0%
Driving Under the Influence of Alcohol - First	52	4716	22	676	5466	86.3%
Driving Under the Influence of Alcohol and Drugs - First	1	33		5	39	84.6%
Driving Under the Influence of Any Drug (Narcotic, etc) - First	4	57		29	90	63.3%
Driving Under the Influence of Non-Narcotic Drug - First		10		5	15	66.7%
Operating with Alcohol Concentration of 0.08% BAC or Greater - First	6	3844	2	54	3906	98.4%
DUI/BAC - 1st – Commercial Totals		19		4	23	82.6%
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - First		19		4	23	82.6%
DUI/BAC - 1st Under 21 Totals	1	581	8	52	642	90.5%
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - First	1	581	8	52	642	90.5%
DUI/BAC - 2nd Totals	17	1472	3	183	1675	87.9%
Driving Under the Influence of Alcohol - Second	16	1246	3	166	1431	87.1%
Driving Under the Influence of Alcohol and Drugs - Second		10		1	11	90.9%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Second		6		3	9	66.7%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Second	1	210		13	224	93.8%

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DUI/BAC - 2nd – Commercial Totals		1			1	100.0%
Operating a Commercial Motor Vehicle with Alcohol Concentration of 0.04% BAC or Greater - Second		1			1	100.0%
DUI/BAC - 2nd Under 21 Totals		15		1	16	93.8%
Operating with Alcohol Concentration of 0.02% BAC under 21 years of age - Second		15		1	16	93.8%
DUI/BAC - 3rd Totals	1	302	1	79	383	78.9%
Driving Under the Influence of Alcohol - Third	1	262	1	72	336	78.0%
Driving Under the Influence of Alcohol and Drugs - Third		1			1	100.0%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Third		6		4	10	60.0%
Driving Under the Influence of Non-Narcotic Drug - Third				1	1	0.0%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Third		33		2	35	94.3%
DUI/BAC - 4th or Subsequent Totals	1	419	2	54	476	88.0%
Driving Under the Influence of Alcohol - Fourth or Subsequent Offense	1	398	2	49	450	88.4%
Driving Under the Influence of Alcohol and Drugs - Fourth		5		1	6	83.3%
Driving Under the Influence of Any Drug (Narcotic, etc.) - Fourth		6		1	7	85.7%
Driving Under the Influence of Non-Narcotic Drug - Fourth				1	1	0.0%
Operating with Alcohol Concentration of 0.08% BAC or Greater - Fourth		10		2	12	83.3%
Traffic - Non DUI Totals		914	5	11	930	98.3%
Basic Rule - Reasonable and Prudent		2			2	100.0%
Careless Driving		82			82	100.0%
Driving a Motor Vehicle while Privilege to do so is Suspended or Revoked		2			2	100.0%
Driving without a valid Driver License - Expired less than 180 days		1			1	100.0%
Fail to Give Notice of Accident By Quickest Means/Apparent Damage over \$500		1			1	100.0%
Fail to Have 2 Headlamps Properly Operating on Motor Vehicle				1	1	0.0%
Fail/Have Child Under 6 years old and less than 60 lbs Properly Restrained		1			1	100.0%
Fleeing from or Eluding Peace Officer		1			1	100.0%
Habitual Offender Operating a Motor Vehicle		1			1	100.0%

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Final Disposition DUI/BAC Charges as Amended	Acquittal	Conviction	Deferred	Dismissed	Total Cases	Percent Conviction
Reckless Driving		819	5	10	834	98.2%
Speeding on Non-Interstate - Exceeding Day Limit of 70 MPH		2			2	100.0%
Unlawful Possession of Open Alcoholic Beverage Container in Motor Vehicle on Highway		1			1	100.0%
Violation of Motor Carrier Standards - First		1			1	100.0%
Grand Total	83	13225	47	1183	14538	91.0%
Percentage	0.6%	91.0%	0.3%	8.1%	100%	

ⁱ A one-to-one comparison of court dispositions to convictions reported by Department of Justice, Motor Vehicle Division (DOJ-MVD) is not possible because charges filed in Montana courts may include drivers licensed out-of-state; conversely, DOJ-MVD records include convictions for Montana drivers charged and convicted with violations out-of-state. Further, this report only includes charges filed after January 1, 2008.