

WHAT EVERY LAWYER NEEDS TO KNOW ABOUT MONTANA CRIMINAL LAW AND PROCEDURE

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Primary Governing Principles:

U.S. Constitution
Montana Constitution
Title 45 – Crimes
Title 46 – Criminal Procedure

Remember: the Montana Constitution in many instances is more protective of the rights of its citizens than the U.S. Constitution. The Montana Supreme Court has repeatedly “refused to march lockstep with the United States Supreme Court’s pronouncements concerning” the federal constitution. Kafka v. Mont. Dep’t. of Fish, Wildlife & Parks, 2008 MT 460, ¶ 165.

A. Montana Constitution

1. Art. II, § 10: The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. *Montana’s right to privacy is significantly more restrictive than the right to privacy implied in the U.S. Constitution.*
2. Art. II, § 11 (equivalent to 4th Amendment): The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.
3. Art. II, § 21 (equivalent to 8th Amendment): All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.
4. Art. II, § 22 (equivalent to 8th Amendment): Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.
5. Art. II, § 24 (equivalent to 6th Amendment): In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have

a change of venue for any of the causes for which the defendant may obtain the same.

6. Art. II § 25 (equivalent to 5th Amendment): No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.
7. Art. II, § 26: The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous

B. Criminal Procedure – Montana Code Annotated, Title 46

1. Investigative Tools

a. Investigative Subpoenas § 46-4-301, et seq.

- 1) Issued upon showing that prosecutor has a duty to investigate EXCEPT when constitutionally protected material, such as medical records, sought, then probable cause required.
- 2) Affidavit prepared by prosecutor
- 3) May require production of records, papers or other things.
- 4) Contempt is the punishment for failure to comply BUT subject may receive immunity if compelled to testify.

b. Custodial Interrogation § 46-4-401, et seq.

- 1) Pen register and trap and trace – old school method to capture or identify originating numbers of incoming and outgoing calls.
- 2) Custodial interrogations MUST be recorded.
- 3) Unrecorded statements may be admissible if voluntary and reliable OR one or more of following:
 - a) Statements made as part of routine booking process;
 - b) Subject refuses to talk if recorded;
 - c) Unforeseeable equipment failure;
 - d) Exigent circumstances prevent recording;
 - e) Statements surreptitiously recorded;
 - e) Statements made in compliance with law of another state where interrogation conducted.
- 4) If custodial interrogation not recorded, court may give cautionary instruction.

2. Search and Seizure

a. Under Montana law, a search occurs when the State infringes upon an individual's reasonable expectation of privacy. Factors considered (State v. Goetz and Hamper, 2008 MT 296, ¶ 27:

- 1) Does the individual express a subjective expectation of privacy?

- 2) Is this subjective expectation one that society would consider reasonable?
- 3) What is the nature of the state's intrusion?
- b. Warrantless searches are *per se* unreasonable. State v. Elison, 2000 MT 288. Montanan's heightened privacy expectations require analysis of the above factors under the Montana constitution not the federal constitution. Goetz, ¶ 23.
- c. Exceptions to warrant requirement in Montana more restrictive than those available under federal law. Examples:
 - 1) No automobile exception
 - 2) A dog sniff is a search requiring particularized suspicion.
 - 3) Particularized suspicion required to search garbage.
 - 4) No curtilage.
 - 5) Warrant required to record face to face or telephonic conversations with one party consent.
- d. Search Warrants - § 46-5-101, *et seq.*
 - 1) Either district court judge, justice of the peace or municipal court judge may issue. § 46-5-220
 - a) Warrant signed by district court judge valid throughout state.
 - b) JP or municipal court warrant only valid in geographical jurisdiction.
 - c) Acting JP must be properly appointed or warrant not valid. Potter ex rel. District Court, 266 Mont. 384, 880 P.2d 1319 (1994).
 - 2) Peace officer, city or county attorney or attorney general may apply. § 46-5-220
 - 3) Grounds § 46-5-221:
 - a) Probable cause that offense committed;
 - b) PC that evidence, contraband or persons to be found in location described;
 - c) Particularly describes location to be searched; and
 - d) Particularly describes items or persons to be seized
 - 4) Warrant must be served within 10 days of issuance. § 46-5-225
 - 5) Judge must authorize service at night, § 46-5-220, or a no knock entry based on "any foreknown exigent circumstances justifying the no-knock entry." State v. Anyan, 2004 MT 95, ¶ 63.
 - 6) Warrant to be served by peace officer specifically named or officer acting at the applicant's direction. However, warrant and application may only be read in conjunction with each other if applicant serves the warrant. State v. Broell, 814 P.2d 44 (1991)

- 7) Warrant served by showing original to person or at place to be searched and leaving copy. § 46-5-227.
- 8) Reasonable force may be used in serving warrant. Persons on premises may be detained and searched but in least intrusive manner. § 46-5-227.
- 9) Return must be made promptly and with written inventory. § 46-5-301.
- 10) Technical defects:
 - a) Search with or without warrant not illegal if substantial rights of accused not affected. § 46-5-103(1)(c)
 - b) Failure to leave copy and receipt with person or at place searched does not render evidence inadmissible. § 46-5-227
- e. Stop and Frisk or Terry stop
 - 1) Codified at § 46-5-401 – requires particularized suspicion.
 - 2) Officer may request name and address, driver’s license of person driving along with registration and proof of insurance.
 - 3) Person must be promptly advised of reason for stop.
 - 4) Person may be frisked for officer safety.
 - 5) Stop may last only as long as necessary to effectuate purpose
3. Arrest § 46-6-101, *et seq.*
 - a. Persons exempt from arrest § 46-6-102
 - b. Miranda warning required before custodial interrogation § 46-6-107
 - c. Person may not be arrested in home at night for misdemeanor that occurred at another place or time without a warrant § 46-6-105
 - d. Only force necessary to effect arrest justified § 46-6-104
 - e. Issuance of arrest warrant requires probable cause that person identified in warrant has committed offense. § 46-6-201.
 - f. Warrantless arrest
 - 1) Officer must believe person is committing or has committed offense and existing conditions require arrest
 - 2) Officer must determine predominate aggressor in Partner Family Member Assault complaint using factors set forth at § 46-6-311(2)(b)
 - g. Arrest, citation or stop quotas are prohibited § 46-6-420
 - h. Special provisions regarding investigations or arrests made in domestic violence situations require:
 - 1) A report to be written by the officer even in no arrest is made. § 46-6-601
 - 2) Victims be informed of their rights § 46-6-602
 - 3) Seizure and retention of any weapon used or threatened to be used § 46-6-603

4. Initial Appearance of Arrested Person § 46-7-101, *et seq.*
 - a. Regardless of whether arrest occurs with or without warrant, person must be brought before nearest and most accessible judge without unnecessary delay.
 - b. Defendant may appear either in person or by two-way electronic audio-video communication.
 - c. Defendant must be advised of certain rights
 - 1) Charge or charges;
 - 2) Right to counsel;
 - 3) Right to assigned counsel if indigent;
 - 4) Right to pre-trial release or bond;
 - 5) Conviction may result in loss of rights including rights regarding firearms under state and federal law;
 - 6) Right to judicial determination of probable cause.
 - d. Most defendants charged with felonies make an initial appearance in justice court. The justice of the peace cannot take a plea in a felony case.
5. Right to Counsel § 46-8-101, *et seq.*
 - a. Defendant entitled to appointed counsel if offense is a felony, or a misdemeanor for which incarceration is a sentencing option.
 - b. A defendant may waive the right to counsel if the court determines the waiver is made knowingly, voluntarily and intelligently
6. Bail § 46-9-101, *et seq.*
 - a. Bail available in all but capital offenses
 - b. The court may impose any condition that will reasonably ensure the defendant's appearance or the safety of any person or the community
 - c. Common restrictions include prohibitions on use of alcohol, travel outside the county or state, contact with victims or witnesses, possession of weapons. Defendants must also remain law abiding.
 - d. Bail must be set at the initial appearance. A defendant typically makes first appearance in justice court.
 - e. Factors in determining the amount of bail § 46-9-301
 - 1) sufficient to ensure presence of defendant;
 - 2) sufficient to ensure compliance with bond conditions;
 - 3) sufficient to protect any person from bodily injury
 - 4) not oppressive;
 - 5) commensurate with nature of offense;
 - 6) defendant's financial ability;
 - 7) defendant's prior record;
 - 8) defendant's ties to the community and length of residence there;
 - 9) defendant's family relationships and ties;
 - 10) defendant's employment status.

- f. Either party may ask for modification of bail amount or conditions upon reasonable notice.
 - g. Bail may be furnished in cash, by surety or with property.
 - h. Bond may only be forfeited if the defendant fails to appear. Violation of other conditions cannot form the basis for forfeiture.
 - i. If the defendant violates any bond conditions, the state may file a petition to revoke release. The defendant is then arrested and brought before the court for a redetermination of bail. The court may continue or increase bail, or impose additional conditions.
7. Preliminary Examination § 46-10-101, *et seq.*
- a. If a felony case is filed first in justice court, the justice court must hold a preliminary hearing after the defendant makes an initial appearance.
 - b. At the preliminary hearing, the state must produce evidence establishing probable cause that an offense was committed and that the defendant committed it.
 - c. The defendant may cross-examine the state's witnesses and call witnesses on the defendant's behalf.
 - d. The defendant may not seek exclusion of allegedly illegally obtained evidence.
 - e. A preliminary examination is not necessary if:
 - 1) The defendant waives the preliminary hearing; or
 - 2) The state files directly into district court.
8. Commencement of Prosecution § 46-11-101
- a. Methods:
 - 1) Complaint – filed in justice court;
 - 2) Information – filed in district court;
 - 3) Indictment – returned by a grand jury.
 - b. How to file an Information
 - 1) State files motion for leave to file Information along with Information, Affidavit of Probable Cause, Notice to Appear and Arrest Warrant.
 - 2) The affidavit must set forth probable cause to believe an offense was committed and the defendant committed the offense.
 - 3) The affidavit does not have to set out proof beyond a reasonable doubt or a *prima facie* case. What is required is evidence that establishes a probability the individual charged committed the offense charged. State v. Elliott, 2002 MT 26, ¶ 26.
 - 4) An Information may be amended in matters of substance at any time, but not less than 5 days before trial upon filing motion, proposed amended Information, and affidavit.
 - 5) An Information may be amended as to form at any time provided no different or additional offense is charged.

- c. Form of Charge
 - 1) The charging document must be a plain, concise and definite statement of the offense charged including a citation to the statute, rule or regulation alleged to have been violated.
 - 2) Information is signed by prosecutor, must list witnesses.
 - 3) Officer can sign complaint.
 - d. Effect of Former Prosecutions § 46-11-503
 - 1) Montana's protection against double jeopardy is more stringent than that provided by the U.S. Constitution.
 - 2) Three part test to determine whether former prosecution prevents subsequent prosecution, State v. Cline, 2013 MT 188, ¶ 9:
 - a) Did the defendant's conduct constitute an "equivalent offense" within the jurisdiction of the court where the first prosecution occurred and within the jurisdiction of the court where the subsequent prosecution is pursued.
 - b) Did the first prosecution result in an acquittal or a conviction.
 - c) Did the second jurisdiction base the subsequent prosecution on an offense that arose from the same transaction.
 - d) All three factors must be met to bar a subsequent prosecution.
 - e) Equivalent Offense: "[T]he same conduct must subject a defendant to the possibility that he could be convicted of an 'equivalent offense' in each jurisdiction." The two offenses need not be identical to be considered equivalent. Further, the equivalent offense requirement can be met even if the defendant is not charged with the offense in both jurisdictions. A defendant can meet the equivalent offense requirement as long as his conduct constitutes "an equivalent offense in both jurisdictions."
9. Arraignment § 46-12-101, *et seq.*
- a. Trial court arraigns the defendant who may appear either in person or by two-way audio visual communication.
 - b. Advice to defendant:
 - 1) Maximum penalty and mandatory penalties;
 - 2) Right to counsel;
 - 3) Right to plead not guilty, to jury trial, confront witnesses;
 - 4) Consequences of guilty plea;
 - 5) Court not bound by plea agreements.
 - c. Possible pleas:
 - 1) Not guilty;
 - 2) Guilty;

- 3) *Nolo contendere* – requires consent of prosecutor and court.
 - 4) Provided the plea is entered voluntarily and the defendant is under no disability that would prevent the court from proceeding, a court cannot refuse to accept a defendant’s guilty plea.
- d. Plea agreements
- 1) If the court rejects a plea agreement made pursuant to § 46-12-211(1)(a) (prosecutor agrees to dismiss charges) or (b) (state and defense agree on specific sentence), the court must allow the defendant to withdraw the guilty plea.
 - 2) If the court rejects a plea agreement made pursuant to § 46-12-211(1)(c) (prosecutor makes recommendation or agrees not to oppose defendant’s recommendation with acknowledgment that agreement not binding on court) the court does not have to allow withdrawal of guilty plea.
10. Pretrial Motions § 46-13-101, *et seq.*
- a. Any motion capable of being decided prior to trial should be raised at the omnibus hearing. However, motions *in limine* may be made at any time.
 - b. State must give notice of intent to seek persistent felony offender status by the omnibus hearing.
 - c. At omni, defense must give notice of certain defenses: alibi, compulsion, entrapment, justifiable use of force, mistaken identity.
 - d. The state may move to join the trials of two or more defendants, or charging documents provided that joinder is not prejudicial to the defendant.
 - e. Motions to suppress must be in writing, and state facts. If allegations, if proven true, would warrant suppression, the state has the burden of proving the evidence admissible. Issue of admissibility is a legal determination that should not be submitted to the jury. But the facts and circumstances are admissible to explain circumstances.
11. Mental Competency of Accused § 46-14-101, *et seq.*
- a. Mental disease or defect organic, mental or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking or judgment to such an extent that the person requires care, treatment, and rehabilitation. Does not include:
 - 1) abnormality manifested by repeated criminal behavior;
 - 2) being drunk or high, or an addict;
 - 3) a developmental disability.
 - b. Issues are:
 - 1) Whether the defendant competent to stand trial and assist in defense;
 - 2) Whether defendant able to appreciate the criminality of defendant’s conduct; or

- 3) Whether defendant able to conform conduct to requirements of law.
 - c. Mental disease or defect pretrial:
 - 1) The court or either party may raise issue of defendant's mental state.
 - 2) State has right to exam if issue raised by defense.
 - 3) Defendant can go to Warm Springs State Hospital for up to 60 days.
 - a) If not fit to proceed, 90 treatment plan implemented.
 - b) If fit, go to trial.
 - c) If not fit, case dismissed. Defendant may be committed to WSSH.
 - d. Mental disease or defect post-trial
 - 1) Not guilty by reason of mental disease or defect – defendant may be committed to the custody of the director of public health and human services.
 - 2) At sentencing – defendant can be committed to DPHHS if unable to appreciate criminality of conduct or conform to requirements of the law. Commitment can be suspended or to WSSH. NO COMMITMENT TO DPHHS WITHOUT EVALUATION APPROVED BY DPHHS IN ADVANCE.
12. Production of Evidence
- a. Depositions § 30-10-101, *et seq.* permits depositions to be taken and used at trial of a witnesses who will be unavailable or unwilling to attend the trial. In a felony case, the judge may issue a material witness warrant if it appears the witness will refuse to come to trial.
 - b. Production of Evidence
 - 1) Required disclosure by prosecution § 46-15-322. Note: the prosecution may not destroy or conceal exculpatory evidence, but is not required to preserve or otherwise search for exculpatory evidence for the defense. State v. Barrack, 67 Mont. 154, 158; 882 P.2d 1028, 1030 (1994).
 - 2) Required disclosure by defense § 46-15-323.
 - 3) Disclosure of informant who will not be called to testify is not required if disclosure would endanger informant and nondisclosure would not affect defendant's substantial rights. § 46-15-324.
 - 4) Both parties have an ongoing duty to disclose discoverable information or materials. § 46-15-327.
13. Trial
- a. Defendants in custody have precedence on trial calendar. § 46-16-101.
 - b. Challenges for cause – jury selection. § 46-16-115.
 - c. Peremptory challenges – 6 when 12 person jury (felony); 3 when 6 person jury (misdemeanor). § 46-16-116.

- d. A defendant charged with a misdemeanor may be tried and sentenced *in absentia*. § 46-16-122.
 - e. Rules of Evidence in Criminal Cases
 - 1) Montana Rules of Evidence and civil procedure are applicable unless otherwise stated. § 46-16-201.
 - 2) Child Hearsay Exception. § 46-16-220
14. Sentence and Judgment
- a. Correctional and sentencing policy for state of Montana. § 46-18-101
 - b. Presentence investigation required in all felony cases, unless the court makes a finding that a report is not necessary. § 46-18-111(2).
 - c. In sex cases, the PSI must include a psychosexual evaluation. § 46-18-111(1)(b).
 - d. If the defendant suffers from a mental disease or defect, the PSI must include a mental evaluation. § 46-18-111(1)(c).
 - e. PSI must include specified information, § 46-18-112, and are not open for public inspection. § 46-18-113.
 - f. Conflict between oral pronouncement and written judgment must be modified within 120 days. A factually erroneous sentence or judgment may be corrected at any time. Illegal sentences must be address by appeal or postconviction relief. § 46-18-116.
 - g. A sentence court may defer imposition for 1 year in a misdemeanor case or 3 years if there is a monetary obligation. In a felony case, the sentence may be deferred for a maximum of 3 years unless there is a monetary obligation in which case the court may defer for 6 years. § 46-18-201.
 - h. The court may impose any restriction on a defendant's sentence reasonably related to objectives of rehabilitation and the protection of the victim and society. § 46-18-202.
- C. Criminal Offenses
- 1. Mental States – either conduct oriented or result oriented:
 - a. Purposely – A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning. § 46-2-101(65)
 - b. Knowingly - a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular

fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning. § 46-2-101(35).

- c. Negligently - a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning. § 45-2-101(43).
2. Accountability – persons aiding and abetting or soliciting a crime are legally accountable and is subject to the same punishment as the person who commits the offense. § 45-2-301, *et seq.*
3. Justifiable Use of Force – an affirmative defense. In order to rely upon this defense, the defendant must first admit the act charged.
 - a. Use of force in defense of person § 46-3-102 – limitations on use of force likely to cause death or serious bodily injury.
 - b. Use of force in defense of occupied structure § 46-3-103 – can only use force likely to cause death or serious bodily injury if force is necessary to prevent assault or other forcible felony.
 - c. Use of force to protect other property § 46-3-104 - can only use force likely to cause death or serious bodily injury if force is necessary to forcible felony.
4. Inchoate Offense
 - a. Solicitation § 45-4-101;
 - b. Conspiracy § 45-4-102;
 - c. Attempt § 45-4-103.
5. Offenses Against the Person:
 - a. Homicide
 - 1) Deliberate Homicide § 45-5-102;
 - 2) Mitigated Deliberate Homicide § 45-5-103;
 - 3) Negligent Homicide § 45-5-104;
 - 4) Aiding or Soliciting Suicide § 45-5-105;
 - 5) Vehicular Homicide While Under the Influence § 45-5-106.
 - 6) **HB 104: Amend homicide laws to include deaths involving an unborn fetus** – This law amends Mont. Code Ann. §§ 45-5-102 and 45-5-103 to include purposely or knowingly causing the death of an unborn fetus with knowledge that the woman is pregnant. It

exempts abortion providers and other medical professionals, as well as the pregnant woman.

- b. Assault and Related Offenses
 - 1) Assault § 45-5-201;
 - 2) Aggravated Assault § 45-5-202;
 - 3) Intimidation § 45-5-203;
 - 4) Mistreating Prisoners § 45-5-204;
 - 5) Negligent Vehicular Assault § 45-5-205;
 - 6) Partner or Family Member Assault § 45-5-206;
 - 7) Criminal Endangerment § 45-5-207;
 - 8) Negligent Endangerment § 45-5-208;
 - 9) Assault on Peace Officer or Judicial Officer § 45-5-210;
 - 10) Assault on Sports Official § 45-5-211;
 - 11) Assault on Minor § 45-5-212;
 - 12) Assault with Weapon § 45-5-213;
 - 13) Assault with Bodily Fluid § 45-5-214;
 - 14) Stalking § 45-5-220;
 - 15) Malicious Intimidation or Harassment Relating to Civil or Human Rights § 45-5-221;
 - 16) Surreptitious Visual Observation or Recordation § 45-5-223.
- c. Kidnapping
 - 1) Unlawful Restraint § 45-5-301;
 - 2) Kidnapping § 45-5-302;
 - 3) Aggravated Kidnapping § 45-5-303;
 - 4) Custodial Interference § 45-5-304;
 - 5) Subjecting Another to Involuntary Servitude § 45-5-305;
 - 6) Trafficking of Persons for Involuntary Servitude § 45-5-306.
 - 7) **HB 478: Revise laws related to human trafficking** – This bill criminalizes the transport of persons across state lines for the purposes of commercial sexual activity and establishes the crimes of subjecting a child to sexual servitude and patronizing a child. This law has an effective date of July 1, 2013.
- d. Robbery § 45-5-401.
- e. Sexual Crimes
 - 1) Sexual Assault § 45-5-502;
 - 2) Sexual Intercourse without Consent § 45-5-503;
 - 3) Indecent Exposure § 45-5-504;
 - 4) Deviate Sexual Conduct § 45-5-505;
 - 5) Incest § 45-5-507.
- f. Offenses Against the Family
 - 1) Prostitution § 45-5-601;
 - 2) Promoting Prostitution § 45-5-602;

- 3) Aggravated Promotion of Prostitution § 45-5-603;
 - 4) Bigamy § 45-5-611;
 - 5) Marrying a Bigamist § 45-5-612;
 - 6) Nonsupport § 45-5-621;
 - 7) Endangering Welfare of Children § 45-5-622;
 - 8) Unlawful Transactions with Children § 45-5-623;
 - 9) Unlawful Attempt to Purchase or Possession of Intoxicating Substance § 45-5-624;
 - 10) Sexual Abuse of Children § 45-5-625;
 - 11) Violation of Order of Protection § 45-5-626;
 - 12) Ritual Abuse of Minor § 45-5-627;
 - 13) Interference with Parent-Child Contact § 45-5-631;
 - 14) Aggravated Interference with Parent Child Contact § 45-5-632;
 - 15) Parenting Interference § 45-5-633;
 - 16) Tobacco Possession or Consumption by Persons Under 18 Years of Age § 45-5-637.
 - 17) **SB 160: Create the offense of criminal child endangerment** – This new law makes it explicitly clear that the following acts constitute child abuse punishable by law: failing to obtain medical care when a child is critically injured; leaving a child in the care of a known abuser or sexual predator; driving drunk or under the influence of drugs with a child in the car; or failing to provide adequate nutrition to a child that results in a medical diagnosis of failure to thrive. This law was effective immediately upon enactment on April 25, 2013.
6. Offenses Against Property
- a. Criminal Mischief and Arson
 - 1) Criminal Mischief § 45-6-101;
 - 2) Negligent Arson § 45-6-102;
 - 3) Arson § 45-6-103;
 - 4) Desecration of Capitol, Place of Worship, Cemetery or Public Memorial § 45-6-104;
 - 5) Criminal Destruction of or Tampering with Communications Device § 45-6-105;
 - 6) Criminal Mischief Damage to Rental Property § 45-6-106.
 - b. Criminal Trespass and Burglary
 - 1) Criminal Trespass to Vehicles § 45-6-202;
 - 2) Criminal Trespass to Property § 45-6-203;
 - 3) Burglary § 45-6-204;
 - 4) Possession of Burglary Tools § 45-6-205.
 - c. Theft and Related Offenses
 - 1) Theft § 45-6-301;

- 2) Theft of Lost or Mislaid Property § 45-6-302;
 - 3) Theft of Labor or Services of Use of Property § 45-6-305;
 - 4) Obtaining Communications Services with Intent to Defraud § 45-6-306;
 - 5) Aiding the Avoidance of Telecommunications Charges § 45-6-307;
 - 6) Unauthorized Use of Motor Vehicles § 45-6-308;
 - 7) Failure to Return Rented or Leased Personal Property § 45-6-302;
 - 8) Unlawful Use of a Computer § 45-6-311;
 - 9) Unauthorized Acquisition or Transfer of Food Stamps § 45-6-312;
 - 10) Medicaid Fraud § 45-6-313;
 - 11) Theft by Disposal of Stolen Property § 45-6-314;
 - 12) Defrauding Creditors § 45-6-315;
 - 13) Issuing a Bad Check § 45-6-316;
 - 14) Deceptive Practices § 45-6-317;
 - 15) Deceptive Business Practices § 45-6-318;
 - 16) Chain Distributor Schemes § 45-6-319;
 - 17) Forgery § 45-6-302;
 - 18) Obscuring Identity of Machine § 45-6-326;
 - 19) Illegal Branding or Altering or Obscuring of Brand § 45-6-327;
 - 20) Theft of Identity § 45-6-332;
 - 21) Money Laundering § 45-6-341.
 - 22) **HB 463: Create the offense of theft of nonferrous metals.**
7. Offenses Against Public Administration
- a. Bribery and Corrupt Influence
 - 1) Bribery in Official and Political Matters § 45-7-101;
 - 2) Threats and Other Improper Influence in Official and Political Matters § 45-7-102;
 - 3) Criminal Use of Office or Position § 45-7-103;
 - 4) Gifts to Public Servants by Persons Subject to Their Jurisdiction § 45-7-104.
 - b. Perjury and Other Falsification in Official Matters
 - 1) Perjury § 45-7-201;
 - 2) False Swearing § 45-7-202;
 - 3) Unsworn Falsification to Authorities § 45-7-202;
 - 4) False Alarms to Agencies of Public Safety § 45-7-204;
 - 5) False Reports to Law Enforcement Authorities § 45-7-205;
 - 6) Tampering with Witnesses or Informants § 45-7-206;
 - 7) Tampering with or Fabricating Physical Evidence § 45-7-207;
 - 8) Tampering with Public Records or Information § 45-7-208;
 - 9) Impersonation of Public Servant § 45-7-209;
 - 10) False Claim to Public Agency § 45-7-210.

- c. Obstructing Governmental Operations
 - 1) Resisting Arrest § 45-7-301;
 - 2) Obstructing Peace Officer or Other Public Servant § 45-7-302;
 - 3) Obstructing Justice § 45-7-303;
 - 4) Failure to Aid Peace Officer § 45-7-304;
 - 5) Compounding of Felony § 45-7-305;
 - 6) Escape § 45-7-306;
 - 7) Transferring Illegal Articles § 45-7-307;
 - 8) Bail-jumping § 45-7-308;
 - 9) Criminal Contempt § 45-7-309.
- d. Official Misconduct § 45-7-401.
- e. Employer Misconduct § 45-7-501;
- 8. Offenses Against Public Order
 - a. Conduct Disruptive of Public Order
 - 1) Disorderly Conduct § 45-8-101;
 - 2) Failure of Disorderly Persons to Disperse § 45-8-102;
 - 3) Riot § 45-8-103;
 - 4) Incitement to Riot § 45-8-104;
 - 5) Criminal Incitement § 45-8-105;
 - 6) Bringing Armed Individuals Into State § 45-8-106;
 - 7) Civil Disorder § 45-8-109;
 - 8) Obstructing Health Care Facility Access § 45-8-110;
 - 9) Public Nuisance § 45-8-111;
 - 10) Creating Hazard § 45-8-113;
 - 11) Failure to Yield Party Line § 45-8-114;
 - 12) Illegal Posting of State and Federal Land § 45-8-115;
 - 13) Funeral Picketing § 45-8-116.
 - 14) **HB 446: Amend the offense of disorderly conduct** – This law amends Mont. Code Ann. § 45-8-101 by deleting the discharge of firearms as a basis for a disorderly conduct offense.
 - b. Offensive, Indecent and Inhumane Conduct
 - 1) Obscenity § 45-8-201;
 - 2) Public Display or Dissemination of Obscene Materials to Minors § 45-8-206;
 - 3) Harming a Police Dog § 45-8-209;
 - 4) Causing Animals to Fight § 45-8-210;
 - 5) Cruelty to Animals § 45-8-211;
 - 6) Criminal Defamation § 45-8-212;
 - 7) Privacy in Communications § 45-8-213;
 - 8) Bribery in Contests § 45-8-214;
 - 9) Desecration of Flags § 45-8-215;
 - 10) Unlawful Automated Telephone Solicitation § 45-8-216;

- 11) Aggravated Animal Cruelty § 45-8-217;
 - 12) Criminal Invasion of Personal Privacy § 45-8-220;
 - 13) Predatory Loitering by Sexual Offender § 45-8-221.
- c. Weapons
- 1) Possession or Use of Machine Gun in Connection with a Crime § 45-8-304;
 - 2) Possession or Use of Machine Gun for Offensive Purpose § 45-8-305;
 - 3) Unlawful Possession of Firearm by Convicted Person § 45-8-313;
 - 4) Carrying Concealed Weapons § 45-8-316;
 - 5) Possession of Deadly Weapon by Prisoner or Youth in Facility § 45-8-318;
 - 6) Carrying Concealed Weapon While Under Influence § 45-8-327;
 - 7) Carrying Concealed Weapon in Prohibited Place § 45-8-328;
 - 8) Switchblade Knives § 45-8-331;
 - 9) Reckless or Malicious Use of Explosives § 45-8-333;
 - 10) Possession of Destructive Device § 45-8-334;
 - 11) Possession of Explosives § 45-8-335;
 - 12) Possession of Silencer § 45-8-336;
 - 13) Carrying Firearms on Train § 45-8-339;
 - 14) Sawed-off Firearm § 45-8-340;
 - 15) Firing Firearms § 45-8-343;
 - 16) Use of Firearms by Children Under Fourteen § 45-8-344;
 - 17) Criminal Liability of Parent or Guardian § 45-8-345;
 - 18) Possession or Allowing Possession of Weapon in School Building § 45-8-361.
- d. Montana Street Terrorism Enforcement or Prevention Act
- 1) Use of Threat to Coerce Gang Membership § 45-8-403;
 - 2) Supplying of Firearms to Criminal Street Gang § 45-8-406.
9. Dangerous Drugs
- a. Offenses Involving Dangerous Drugs
- 1) Criminal Distribution of Dangerous Drugs § 45-9-101;
 - 2) Criminal Possession of Dangerous Drugs § 45-9-102;
 - 3) Criminal Possession with Intent to Distribute § 45-9-103;
 - 4) Fraudulently Obtaining Dangerous Drugs § 45-9-104;
 - 5) Altering Labels on Dangerous Drugs § 45-9-105;
 - 6) Criminal Possession of Precursors to Dangerous Drugs § 45-9-107;
 - 7) Criminal Distribution of Dangerous Drugs on or Near School Property § 45-9-109;
 - 8) Criminal Production or Manufacture of Dangerous Drugs § 45-9-110;

- 9) Criminal Distribution of Imitation Dangerous Drugs § 45-9-112;
 - 10) Criminal Possession of Imitation Dangerous Drugs with the Purpose to Distribute § 45-9-113;
 - 11) Criminal Advertisement of Imitation Dangerous Drug § 45-9-114;
 - 12) Criminal Manufacture of Imitation Dangerous Drug § 45-9-115;
 - 13) Criminal Possession of Toxic Substances § 45-9-121;
 - 14) Continuing Criminal Enterprise § 45-9-125;
 - 15) Carrying Dangerous Drugs on Train § 45-9-127;
 - 15) Operation of Unlawful Clandestine Laboratory § 45-9-132;
 - 16) Use or Possession of Property Subject to Criminal Forfeiture § 45-9-206.
 - 17) **HB 140: Criminalize new designer drugs** – This law amends criminal laws regarding dangerous drugs and the controlled substances act to include new drugs such as “bath salts” and “spice” which mimic dangerous drugs so that any drug with a molecular structure similar to these compounds is also illegal under Montana law.
- b. Model Drug Paraphernalia Act
 - 1) Criminal Possession of Drug Paraphernalia § 45-10-103;
 - 2) Manufacture or Delivery of Drug Paraphernalia § 45-10-104;
 - 3) Delivery of Drug Paraphernalia to Minor § 45-10-105;
 - 4) Advertisement of Drug Paraphernalia § 45-10-106.
10. Criminal Offenses Not In Title 45
 - a. § 61-8-401, *et seq.* Driving Under the Influence;
 - b. Title 61 – other traffic offenses;
 - c. Title 87 – fish and game violations;
 - d. § 23-5-101, *et seq.* provisions related to gambling;
 - e. § 30-10-101, *et seq.* provisions related to securities;
 - f. Title 33 – provisions related to regulation of insurance;