

Montana

G218

[Guide To Turning 18]

Answering teens' questions about becoming adults:

| What happens if I'm arrested? | What are my rights to privacy? | How do I buy a car? | Do I have to be paid minimum wage and overtime? | What are age-of-consent and rape laws? | What about drug and alcohol laws? | Do I need a Social Security number? | How do I rent a house or apartment? | How do I get married? What are my parenting responsibilities? *And more ...*



Law Related Education Committee



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Introduction

Turning 18 is an exciting time in your life. You’re getting closer to graduation and you’re taking your first steps into early adulthood. As fun a time as it is, you should keep this in mind: in the eyes of the state of Montana, you are an adult! This is great news for you, but with it comes a new set of responsibilities. All the laws are different and your obligations are different, too. Included in this guide are some helpful tips and pointers to help you make your transition into the adult world. This guide doesn’t have all the answers, but it can help point you in the right direction.

A note about the Montana laws – you will see a series of letters and numbers beginning with MCA. That stands for Montana Code Annotated, which is the multi-volume set of Montana laws. The numbers refer to volume, chapter, and section. The Montana Code Annotated provides more details about laws referred to in this Guide. Find them at www.leg.mt.gov or at your local library.

IMPORTANT NOTE: The information in this guide to is a summary of a few Montana and Federal laws and procedures; it is not meant to be legal advice. To receive legal advice about a situation that affects you, consult an attorney.



Getting Arrested and the Criminal Court

What happens if I'm arrested?

If you have committed a crime, or are suspected of committing a crime, for which the penalty could include jail time, you will be taken into police custody. If the police have “probable cause” (which means a police officer having a reasonable reason to believe you committed the crime), they can arrest you on the spot. Otherwise, the police will issue an arrest warrant and a police officer will locate you and take you into custody, no matter where you happen to be at the time (home, work, school, etc.).

It is VERY IMPORTANT to go peacefully, or you could be subject to additional criminal charges for things like resisting arrest or assault on a police officer. Some people escalate a misdemeanor arrest into a felony (a more serious crime than a misdemeanor that you will face a more harsh sentence for if convicted of the crime) simply by fighting with the police, trying to run away, or otherwise not allowing themselves to be peacefully taken into custody.

Once you are in custody, the police will read you your Miranda rights. Under the 5th Amendment of the U.S. Constitution, you have the right to avoid self-incrimination. The U.S. Supreme Court decision *Miranda v. Arizona* and later cases outlined the police's legal obligation to remind anyone taken into custody of his rights. The reading of the Miranda warning will sound like this:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present during questioning. If you cannot afford an attorney, one will be appointed for you.

If the police do not read you these rights at the time you are taken into custody, any incriminating statements you might make are presumed to be involuntary and usually cannot be used as evidence at your trial. However, you have the right to an attorney, and it is highly advisable that you request one immediately.

When can I request an attorney?

You may ask for an attorney to be present at any time, even if you have not been arrested and are just being questioned. Your right to not incriminate yourself is one of the strongest rights you have under the U.S. Constitution.

You can also request that an attorney be appointed for you at any time. If you are arrested and require an attorney while you are in jail, you will be given the opportunity to call one. If you don't know one, or cannot get a private attorney to represent you, the Public Defender's Office often can provide you short-term legal counsel through your initial court appearance. However, for them to represent you further, you have to prove that you cannot afford to hire a private attorney.

What happens at the jail?

When you arrive at the jail, you will be fingerprinted, have your photograph taken, and may be questioned further. You may – and should – request the presence of an attorney before agreeing to answer any questions.

Sometimes a person may be released on his own recognizance if he is charged with a very minor offense (particularly if the jail is already full). Being released on your own recognizance means that you are released from police custody upon your agreement that you will go to court when you are supposed to, and you do not have to pay any bail in order to be released. Usually, however, you will have to stay in jail or in police custody until you can go in front of a judge and have bail set. When you are checked into jail, you must surrender all of your personal effects and put on jail-issued clothing (typically a jumpsuit and flip-flop shoes). And you will be fingerprinted and photographed.

What is an arraignment?

In Montana, the procedures for an “arraignment” – where you enter a plea of guilty or not guilty – vary depending on whether you have been charged with a misdemeanor or a felony. In general terms, a

misdemeanor is a crime that is punishable by more than five days but less than one year in jail. Any crime where you could be imprisoned for more than a year is a felony. Any crime where you would serve less than five days, or serve no jail time at all, is generally called an infraction.

In Montana, misdemeanors are usually tried in city court or justice court. A felony is generally tried in a state district court.

In district court, before you would go to trial, you would face a three-part process: an initial appearance, the commencement of prosecution, and the arraignment.

First, you have an initial appearance, where the charges you were arrested for are made public and you are informed of your right to an attorney, the bail that is set, and other legal rights you may have. If you haven't been given an attorney yet, this is another time when you can make a request for one.

Bail is money or property (or a bond provided by a bail bondsman) that you give to the court to persuade it to release you from jail before your trial date. When you show up for all your court dates, the bail is returned to you. If you fail to show up, the court seizes your bail. You usually have a right to post bail unless you are charged with a crime that could be subject to the death penalty. Usually, you will be released on bail with a number of specific requirements that you must follow if you want to avoid staying in jail until your trial.

If you have been arrested for a serious crime that will be tried in district court, your initial appearance is followed by proceedings where the prosecution formally requests leave to file charges against you. Usually this is a "preliminary examination," where you appear in front of the judge and the prosecution presents the evidence they have to support their charge.

Once formal charges have been filed, you have an "arraignment," where you enter a plea. You usually only have two options for a plea: guilty or not guilty. (A third type of plea, "nolo contendere," is commonly called "no contest" plea. In this instance, a defendant does not dispute the charges against him, but does not openly accept guilt. It has the same effect as a guilty plea. You should have an attorney advise you whether it is appropriate. As a rule, you should have the advice of an attorney before you enter any kind of plea.)

If you are charged with a minor crime where you did not get put into jail and instead are asked to appear in justice court or city court on a certain day, these proceedings are often completed in a single hearing. For example, if the police give you a citation (often called a "ticket"), the citation itself is the complaint, and when you appear in front of the

judge, you will be asked to make a plea on the spot.

What happens after I plead "guilty" or "not guilty"?

If you plead "guilty," you will usually be sentenced on the spot by the judge for a misdemeanor – though for complex misdemeanors and most felonies, they often set a sentencing hearing for a later date. If you plead "not guilty," the judge will set a trial date for you, and usually asks if you want a "bench trial" – a trial in front of the judge, who makes a decision without a jury – or a "jury trial" – where a jury of six to twelve people decides if you are guilty or innocent. An attorney should also advise you on whether to request a bench or jury trial; there are advantages and disadvantages to each.

What is a "plea bargain"?

If you plead "not guilty," sometimes instead of going to trial, your attorney and the prosecuting attorney may reach an agreement where you will agree to change your plea to guilty, sometimes to a lesser charge, and accept a sentence that is less than what you might otherwise have served. It is not a good idea to try and reach a plea agreement on your own; an attorney is in the position to know how to get the best possible outcome for you, depending on your circumstances. However, be aware that if a plea agreement is offered to you, you can choose not to accept it, and go to trial instead. Furthermore, a judge is not obligated to accept a plea agreement, though they usually do. If the judge does reject the plea agreement, you are given the opportunity to also withdraw your guilty plea. MCA §46-12-211.

What happens if I go to trial?

You should have an attorney if you go to trial, though for minor charges, such as a traffic ticket, some people represent themselves. (You do not have the right to a free attorney unless you are facing jail time as part of your sentence if found guilty.) When you go to trial, there will almost always be a prosecuting attorney who will present the witnesses and evidence against you, and your attorney will have a chance to cross-examine them. You will also have the opportunity to put on witnesses in your own defense; the prosecutor will get to cross-examine them. At the end of the trial, if you are found not guilty, you are free to go. If you are found guilty, then the judge usually sets a separate hearing for later to determine your sentence.

Section Reference: Title 46, Montana Code Annotated.

Lawsuits and the Civil Court

How do I file a lawsuit?

Before you take any action, you need to seriously consider whether or not you should hire a lawyer. Filing a lawsuit, or even deciding whether or not you should file one, is not simple. While having a lawyer is not required, if you choose to proceed on your own, you must read and follow Montana's Rules of Civil Procedure located in the Montana Code Annotated (MCA), as well as any local rules that individual courts may have. Failure to follow these rules, which include deadlines and procedures necessary to advance your claim, can result in the court dismissing your claim.

Often, lawyers will offer free initial consultations to help you and the lawyer decide whether or not you have a claim that is worth pursuing. If you believe you cannot afford a lawyer, your community may have programs in which local lawyers volunteer their time or offer reduced rates depending on your income. Your local legal services agency should be able to tell you if such a program exists.

Equally important is determining whether you have a good case that you can win. If you decide to hire a lawyer, he will advise you on this threshold question. If you choose to proceed without a lawyer, you must research the legal theories that apply to your case. You can find many of the forms you need for free online. You must also determine whether you have enough evidence, which may or may not include witnesses, to prove your case.

Whether you hire a lawyer or proceed on your own, you must seriously consider the expense of the lawsuit and the sources for paying these expenses. Lawsuits are not only expensive but are often time-consuming and require a considerable amount of physical and emotional energy. For these reasons, it is generally not a good idea to file a lawsuit "to prove a point."

What are some reasons for filing a lawsuit?

- You were injured.

- Your property was damaged.
- Merchandise you purchased was defective.
- A person or company did not comply with an oral or written contract with you.
- Work you paid someone to do was not completed.
- You were not paid for your work.
- A professional – for example, a doctor, lawyer, or real estate agent – did not comply with the standards for his profession and you suffered damages as a result.

A civil lawsuit can be filed on behalf of a person who is injured (emotionally or physically) or whose property is damaged because of another person's negligence. A civil suit seeks financial compensation from the person that is being accused of causing the harm. If that person (the defendant) is found to be guilty, he or she will be responsible for paying the damages.

Once you have decided to go forward with your lawsuit, you can expect the following events:

First, the plaintiff – the person who files the lawsuit – must decide which court is the proper one to hear the claim. Montana has state courts, federal courts, justice courts, and small claims courts, among others. Which court is proper depends on both the nature of the claim and the amount of damages the plaintiff is seeking.

Generally, small-claims courts and justice courts hear cases where the plaintiff is claiming a small amount of damages, usually less than \$5,000. State courts (which are located in county seats) are not limited by the amount of damages claimed. In order to file a claim in federal court (located in Missoula, Butte, Great Falls, Helena, and Billings), the plaintiff must generally either be suing someone who is not a Montana resident or the claim must be one based on federal law, such as the Constitution or a federal statute.

Next, the plaintiff must ensure that the time to file the lawsuit has not expired. Each type of claim has a specific period of time or a "statute of limitations." Once this time period has passed, the plaintiff can no longer sue. The time generally begins to run when the event leading to the

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lawsuit, such as a car accident or the signing of a contract, occurs. Statutes of limitation generally range from six months to ten years in Montana. Check the MCA for the statute of limitations for your particular action.

A lawsuit actually begins when the plaintiff files a complaint with the clerk of court. The complaint must list the grounds for the claim, including the identities of those who are being sued – the defendants – and the reasons for the lawsuit. If the plaintiff desires to have a jury decide the case, he usually must request this in the complaint. The complaint may also address the specific amount of money or other relief that the plaintiff is requesting. The plaintiff must pay a fee (often more than \$100) to file a complaint.

After the complaint is filed, the defendant is served with a “summons,” which is issued by the clerk of court and informs the defendant that the plaintiff has filed a lawsuit against him. A summons generally must be delivered in person to the defendant. A sheriff, other law enforcement officer, or a “process server” (one who is in the business of serving court documents on people) makes this delivery. Once the lawsuit has been filed, the plaintiff must actively prosecute his claim in order to avoid having the court dismiss it.

What happens if you are sued?

The following information is a general outline of what happens when a person is sued. Rules and procedures vary, even within Montana, depending in which court the action occurs, as well as according to the subject matter of the claim and the identity of the parties.

When a plaintiff files a lawsuit, the defendant has a specified period of time to respond to the complaint with an “answer.” The defendant can, of course, choose not to respond to the court. Failure to respond will, however, most likely result in a “default judgment” being entered against the defendant. A default judgment may mean that if the plaintiff is seeking a certain sum of money from the defendant, the court will order the defendant to pay this amount to the plaintiff. Because a default judgment is not desirable, the defendant will usually answer the complaint within the required time.

In the answer, the defendant may deny the plaintiff’s claims or may assert a defense to these claims. Some defenses may include, but are not limited to, the defendant’s objections to personal jurisdiction (whether that particular

court has authority over the defendant), venue (whether the action was filed in the proper court), service (whether the complaint and summons were delivered to the defendant properly), and whether the plaintiff’s complaint actually states a claim against the defendant. The defendant generally cannot use these defenses if he fails to address them in the answer.

If the defendant has claims against the plaintiff, known as “counterclaims,” he must generally assert these on or before the time to answer has expired. An example of a counterclaim is when both a plaintiff and a defendant are injured in a car accident and both allege that the other caused the accident. The defendant generally must bring his counterclaim for his own injuries in conjunction with his answer to the plaintiff’s claim of injuries.

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When the court receives the defendant’s answer and any counterclaims, the judge sets a trial date (which is usually more than a year from the time the complaint is filed) and the “discovery” process begins. Discovery is intended to allow both the plaintiff and defendant to obtain information – from witnesses and documents, and from each other. Unlike trials in television shows, discovery generally prevents either side from being surprised by undisclosed facts or unknown witnesses. Both sides must comply with the other’s discovery requests if the requests are allowed under the Rules of Civil Procedure contained in the MCA. Again, if you choose to proceed without a lawyer, you must read and follow these rules, which can often be complex.

In the time before the trial, the plaintiff and defendant may file various motions with the court. These motions generally ask the court to make a certain ruling or to order the other party to take a certain action. Common motions include requests for the court to order the other party to answer discovery requests, to dismiss the claims against a party under a particular legal theory, or to exclude certain evidence at trial.

Often a judge requires that the parties participate in a settlement conference before the date of trial. At such a conference, a “mediator,” who is generally an experienced lawyer or a retired judge, works with both parties to help them reach a settlement without going to trial.

If a trial is necessary, the jury will be selected on the first day of trial, unless the parties have agreed to have a judge decide the case or unless the law does not allow for a jury for that claim. After the jury is selected, the lawyer for each side (or you, if you have no lawyer) makes an opening

statement, which explains what evidence will be presented and the reasons that party believes he should win. Because the plaintiff has the burden of proving his case in a civil trial, he presents his opening statement before the defendant presents his.

The plaintiff also presents his evidence first. The plaintiff gets to question his own witnesses, after which the defendant gets to “cross-examine” the plaintiff’s witnesses.

The process then reverses: the defendant asks questions of his witnesses, followed by the plaintiff’s cross-examination.

After the presentation of evidence, each side makes a closing statement, which summarizes its arguments and case and asks the court or the jury to decide in its favor.

If a jury is deciding the case, the judge will instruct the jury on the law after closing arguments. These instructions include a recitation of the law that governs the case, the way the jury must apply the law to the facts, and the burden of proof that must be met in order for the plaintiff to win. In a civil case, the plaintiff generally must prove his case by a “preponderance of the evidence,” a standard that means that the defendant “more likely than not” is liable for the plaintiff’s damages.

In civil cases, unlike criminal cases, the jury usually does not have to reach a unanimous decision. In Montana state courts, only two-thirds of the jurors have to agree on a verdict. Jury verdicts are read in the courtroom in the presence of the judge, the parties, and the parties’ lawyers.

Once the jury returns a verdict, the judge enters it as a “judgment.” If the judgment is for the plaintiff, then the defendant must comply under penalty of law with the

judgment, which will usually be a monetary award. If the defendant fails to pay, the court has various powers to seize any of the defendant’s assets located within its jurisdiction via such methods as bank account garnishments, liens, and wage garnishments.

A losing party can generally appeal to a higher court from a judgment only when the judge incorrectly ruled on the parties’ motions, inappropriately admitted or failed to admit certain evidence, or when the judge improperly instructed the jury on the law. Losing parties in Montana’s state courts appeal to the Montana Supreme Court, and the Ninth Circuit Court of Appeals hears appeals from federal courts in Montana. Losing parties at the Montana Supreme Court and the Ninth Circuit may appeal to the United States Supreme Court.

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Why the government does not provide you with a lawyer when you are sued

As the United States Supreme Court decided in *Gideon v. Wainwright*, 372 U.S. 335, a landmark 1963 decision, the U.S. Constitution’s Sixth Amendment mandates that the state must provide a lawyer for a defendant who is exposed to the possibility of imprisonment. Most states uphold their Sixth Amendment duties by instituting a public defender’s office and ensuring that defendants exposed to imprisonment are provided with a public defender. Civil cases, however, involve “someone suing someone for something” and do not carry the risk of imprisonment. Because of this, there is no Sixth Amendment right to a lawyer in civil cases.

Search and Seizure

The Montana Constitution provides the same privacy rights for those individuals under the age of 18 as it does for adults. Article II, Section 10 states:

Right of Privacy. *The right of individual privacy is essential to the wellbeing of a free society and shall not be infringed without the showing of a compelling state interest*

Article II, Section 15 states:

Rights of persons not adults. *The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.*

The courts in Montana recognize an individual’s reasonable expectations of privacy in the individual’s own home. This means the police cannot come and search your

home without a warrant or some other compelling state interest.

However, if you allow officers into your home and permit them to search, you have waived your right to privacy.

Similarly, the police cannot search your car without a warrant, or probable cause and a warrant exception, or your consent. “Probable cause” means the officer has some reasonable belief, based on the facts and circumstances, that you have committed an offense. The “warrant exceptions” recognized in Montana include illegal items located in plain view – such as a marijuana joint on the dashboard or a beer can on the floor that a police officer can see from the outside of the car – and a search conducted after a lawful arrest. Searches also may be made if officers believe a danger of bodily harm or the imminent destruction of evidence exists.

Dealing with the police can be an overwhelming and sometimes frightening experience, but it is important for you to remember your rights, regardless of your age.

Always be polite and respectful, but do not let the officer take advantage of you. You do not have to let an officer search your vehicle, home, or person without a warrant or one of the warrant exceptions recognized in Montana. The investigating officer must apply to a judge to get a warrant and the process takes some time. Even if the officer tells you he has a warrant, ask to see the document. You do not have to answer any questions if the officer does arrest you. You should always request and wait to speak to an attorney before answering any questions from arresting officers or investigators.

At school, your privacy interests are less likely to be protected. Be aware of this fact. School officials may conduct locker, backpack, classroom, and person searches if they have reasonable grounds to believe the search will provide evidence that the student has violated or is violating some law or school rule. The search will be permissible so long as it is not excessively intrusive in light of the student’s age, sex, and the nature of the alleged violation.

Consumer Protection

It seems that everyone has received an e-mail from Prince Ngobe Ngayaka of Zimbabwe who has “an immediate business proposal” for you, worth millions. This is an example of blatant fraud. But what about something less obvious? Say you go online and unknowingly navigate to a fake website that looks exactly like your financial institution’s real website, and you give away your log-in and password?

Some fraud is easy to see through. Some isn’t. The result is the same, though: the victim of the fraud will often lose his or her identity, money, reputation, or credit. This section will show some common fraud schemes and how being a victim of fraud can affect you.

When you turn 18, fraud can have damaging effects. It becomes more difficult to “remove” financial and criminal records. For instance, if someone steals your identity and then uses it to commit a crime, you might be wanted for a crime you’ve never committed. As an adult, it is a difficult process to undo the damages of identity theft.

Credit-card fraud and your credit rating

Another complication is your credit report and credit rating (or credit score). A credit score is a number assigned to every individual, and provides a general idea of how well you handle your credit cards and other finances.

The biggest company assigning credit scores is called the Fair Isaac Corporation, developed in 1956 by an engineer and a mathematician. A score created by this organization is called a FICO score, and ranges between 300 and 850. There are some parts of the score that you simply can’t influence; for instance, part of your score is based on how long you’ve had credit cards. By far the most important factors that decide your credit score are your punctuality of payment and how much debt you carry compared to the amount of credit you have available.

Although you are 18, you may have to show your proof of income, show that you have the ability to pay any debt that you charge on a credit card or have a co-signer when applying for a credit card. Other restrictions can apply depending on the financial institution. These restrictions may remain until you are 21. See more detailed information on credit cards on Page 7. If someone else gets your credit card number or identity, your credit score could be ruined. Removing, disputing, and investigating information on your credit report is difficult. The best policy as far as fraud is concerned is prevention; cleaning up the mess is more difficult than taking cautionary steps.

Online-auction fraud

According to the National Consumer's League, online auction fraud is one of the most common types of fraud faced by 18-year-olds.

One of the most popular online scams involving auction sites is sending a check for more than the asking price of the item you are selling. For instance, let's say that you are selling your iPod online for \$150. You get an e-mail from someone who wants to buy it, but the funds are tied up and the person needs you to withdraw the funds. The person will send you a check; you keep the money for the iPod and send the leftover money back. For your troubles, you get to keep \$50 extra. The bank clears the check without any problem, so you send the iPod as well as the extra money to the buyer.

In reality, there is a delay in the U.S. check clearing system. When the bank finds out in a few weeks that the check is fake, it will come back to YOU for the money. Even though you and the financial institution were duped by the bad check, the responsibility stops with you and you are obligated to produce the money. The bottom line is, stay away from any deal where the buyer offers to send you a check for more than you are asking – chances are it's a scam.

What happens if you feel you've been the victim of a scam?

If the scam involves your credit card, the very first thing you should do is cancel your credit card and report the fraud to your financial institution. It's a good idea to write down the toll-free number on the back of your credit cards in case your wallet or purse is stolen. You should also have the phone number of your financial institution readily available. Being prompt in reporting a lost or stolen credit card is very important.

If you are having trouble reporting a lost or stolen credit card, you can call the Federal Trade Commission helpline to get assistance. Its number is 877-FTC-HELP (877-382-4357).

You should also send a letter to confirm the lost or stolen credit card. In the letter, include your account number, the date you noticed your card was missing, and when you reported the loss. Under federal law, you are only responsible for \$50 if your credit card was used to purchase anything. If only the number was stolen, or if your card was used after you reported it missing, you are not liable for any charges. If your debit card was used, the loss will depend on how quickly you reported the loss. Make sure you make a report as soon as you are aware of suspicious activity.

If you have been the victim of a fraud, you should always file a complaint with the Federal Trade Commission. Complaint forms, and information on identity theft, can be found at the FTC consumer website at: www.ftc.gov/bcp/consumer.shtm. On that site, there is also a link to report identity theft.

If you have been a victim of online fraud, there is another website set up to help you report internet scams, located at: www.ic3.gov. You can always call the Montana Legal Services HelpLine for any legal advice regarding fraud or suspected fraud at 1-800-666-6899.

To find out about all consumer protection laws in Montana, go to this website:

www.doj.mt.gov/consumer/.

If you have questions about your rights or need to file a complaint regarding "bait and switch" schemes, telemarketing, online fraud, or unfair business practice, be sure to consult the Montana consumer law website listed above.

Buying a Vehicle

What should I know before I buy a vehicle?

Buying a vehicle is a big decision. It's your responsibility to do research and be a well-informed consumer. Know about the car you want to buy and take your time in making a decision. Check out car-buying websites like www.edmunds.com or

www.cars.com, which provide you with information and a quote from a local dealer. Make sure you are informed and comfortable with your decision before you approach a dealer.

What about buying a used vehicle?

If you are buying a used vehicle, getting a history report – which lists accidents and major repairs on a specific car or truck – is a good idea. You may even be able to convince the seller to provide the vehicle history as a courtesy. Be sure that the report comes from a reputable source like www.carfax.com. If you have to buy a report, it might cost you about \$30. But keep in mind that it could end up saving you hundreds of dollars in the future.

What is a “lemon law”?

A “lemon law” is a protection you have against purchasing a substantially defective *new* automobile. If the defects are the fault of the manufacturer and you have met certain requirements, then Montana law requires them to repair or replace the vehicle. However, it is important to keep in mind that the Montana lemon law does not apply to used vehicles.

What should I be prepared to do financially?

When buying your first vehicle, make sure of two things. First, that you are able to put at least 20 percent down on the vehicle. If you are unable to do this, you may want to buy a cheaper vehicle. Putting anything less than 20 percent down will make you susceptible to an “upside down” loan, which means that you will end up owing more than the car

is worth. Second, make sure that you are able to pay off the loan and other costs within 48 months.

What are some other tips I should know?

Read everything thoroughly when signing paperwork. Some dealers may offer to sell you gap insurance that covers the difference between what your insurance company says your car is worth (actual cash value) if your car is totaled, and what you still owe on your loan or lease. Dealers also may offer to sell you an extended service contract, which covers repairs to your vehicle for a set number of months or miles after the original warranty expires, and credit life insurance, which will pay the loan balance if the borrower dies. If you are interested in these products, you should compare the rates offered for the products from a variety of companies. It is your responsibility to be an informed and educated consumer. When budgeting for a vehicle, you should keep in mind the costs of maintenance and repairs. If you don’t account for these things, you may get in over your head.

The bottom line is to buy a car within your means that gets you where you need to go. Check out www.carbuyingtips.com for a thorough guide on what to do when buying a car. You should also refer to “Car Shopping Tips and Understanding Vehicle Financing,” published by the National Auto Dealers Association. It can be found at www.nada.org.

Credit Cards

Credit cards are basically a relationship built on trust between four people: you, the merchant, the card issuer (such as VISA, MasterCard, or American Express), and the financial institution that provides credit.

The financial institution that gave you credit is vouching for your ability to pay your bills. In exchange, they pay the merchant immediate funds expecting you to pay off your tab at the end of the month. This is what happens when you write your check for the amount of purchases you bought with your credit card. The merchant trusts your financial institution because the transaction is made through a well known card issuer.

Say that you spent \$500 dollars for the month of May, and

at the beginning of May you had \$550 in your checking account. No problem, right? Well, unexpectedly you came down with a terrible toothache and you had to pay \$500 to have the tooth fixed. You only have \$50 in your checking account to put towards your credit card bill. Luckily, the creditor has a system to allow for these situations.

In this case, they will send you a bill that details the transactions you made over the past month. It will give you a total due, but then it will also give you an option to make a minimum payment, which is typically 2 or 3 percent of what you owe. Sounds like a great deal, right? Well, before you rack up the credit card, consider the interest you accrue with each minimum payment made.

The interest is what the financial institution charges you as a fee for loaning you money, which is essentially what credit cards do. They charge something called an Annual Percentage Rate (APR). Let's say you decide to make a minimum payment of \$10, which is 2 percent of \$500, and the creditor charges a 15 percent APR. If you continue to pay only \$10, it will take you 6 1/2 years (79 payments) to pay off the original balance. Most credit cards have a higher APR, and many will even change their rate over time (almost always going up).

As a result, you will have paid nearly \$300 in interest charges to the bank after 6 years. If you decide to pay \$50 dollars a month instead of the minimum payment, you will be debt-free within a year and having paid the financial institution only \$38 in interest charges. So coughing up a few extra bucks a month makes a big difference in paying down debt.

When are credit cards useful?

Sometimes a credit card can save you from a disaster. Most people will turn to a credit card if they have exhausted their other options for borrowing.

Say you have a broken leg and haven't been able to afford health insurance. It might not sound like much, but a single hospital visit can rack up thousands of dollars in debt.

If you have discussed your situation with the hospital billing department and have done your best to set up manageable payments, but they just won't budge, credit cards can be very useful, as long as you set up a reasonable time span to repay the debt and pay more than the minimum payment.

It is important, in case you ever charge a few thousand dollars onto your credit card, that you develop good credit in order to have a higher balance. Your first credit card probably won't have a very high balance limit, a few hundred dollars perhaps. But as you continue to make timely payments and keep your debt down, you can request or be given a higher limit. Developing your credit score (see definition on Page 5) and credit limits will help you in the future, when you decide to buy a car or a house.

A good credit score actually influences a lot of important things in your life; most employers will ask permission to check your credit before hiring you, and landlords routinely check credit as part of their decision to rent.

Why keep the card balance paid down?

It is very important to pay back more than just the minimum payment; carrying a balance and spending so much money on interest is not the way to build your

credit score. Most people who end up in over their heads in credit card debt failed to have a sizeable emergency savings account, or they cannot resist the temptation of having easy credit at their disposal. Once they rack up debt on one credit card, many people will open another credit card in order to pay off the other card. Before long, they have a dozen cards with high balances and no way to make the monthly payments.

A single late payment will snowball into bigger problems very quickly; it affects your credit score, incurs a late-fee charge, and adds finance charges to your bill. Unless you have absolute proof that the late payment resulted because of things out of your control, the credit card issuer will not wipe out the fees, so don't count on it.

Most credit card companies offer an automatic payment that draws from a checking or savings account.

What to do if you end up deep in debt

In the case that you do end up in severe debt, the first plan of attack is to use an online calculator to figure out how much and how long you need to make payments to get out of debt. You can find a reliable calculator online, and a link to one will be included at the end of this chapter. The calculator will help to put into perspective just how much you are paying in interest on top of your debt and will be a real eye opener.

At all costs, you want to avoid bankruptcy. It tarnishes your credit report for at least seven years, and in most cases you won't be able to get rid of all of your debt anyway. There are many alternatives to declaring bankruptcy, such as setting up a repayment plan with the creditor. Many are willing to negotiate a reasonable payment schedule if you set a goal for when you plan to be debt-free and you make the payments on time.

Owning a credit card can be a real lifesaver if you find yourself in a pinch, but just remember not to rely on them or spend beyond what you can reasonably pay back. Credit card companies are in the business of issuing credit cards, but you need to research the rates, penalties, and benefits of the credit card before you sign the first application that comes your way.

Credit Card Calculator:

http://www.webwinder.com/ww_stm_calc_display.php?old_script_id=2

Credit Card Reviews:

<http://www.my3cents.com/companyList.cgi?industry=BANK>

<http://www.cardratings.com/>



Employment

What types of employment can I accept at age 18?

When you turn 18, you may work in almost any occupation. However, the protections of Montana's child labor laws no longer apply to you. Therefore, you may be asked to work unusual hours that could interfere with your schooling. You are also able to obtain employment in fields that involve hazardous tasks such as the handling of explosives, use of power-driven cutting machinery, logging, mining, roofing, and meat processing.

It is important to have a realistic understanding of your skills and physical abilities and be aware of ways you can be taken advantage of, because the law will no longer prevent you from performing dangerous work. MCA §41-2-107.

Can I work in an establishment that sells alcohol?

Even though you cannot purchase or consume alcohol until you are 21, you may be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing alcoholic beverages. MCA §39-2-306.

What does my employer have the right to expect of me?

You must use "ordinary care and diligence" in performing your job. You must also substantially comply with all job-related directions of your employer, except when it is impossible, unlawful, or would impose "new and unreasonable" burdens (as defined by the general public, not by your own opinion) upon you. You are also expected to exercise a reasonable degree of skill and use such skill as you possess, to the best of your ability, to perform the job required. MCA §39-402, -404 & -406.

Do I have to be paid at least "minimum wage"?

Yes, under Montana law, unless you are a farm worker, you have to be paid the legal minimum wage for each hour you work. MCA §39-3-404. The minimum wage in Montana as of January 2013 is \$7.80 an hour.

It will rise to \$7.90 as of 1/1/2014. However, there are some exceptions to this law, particularly for apprenticeships and other types of job-training programs. The types of employment excluded from the standard minimum wage are listed at MCA §39-3-406.

During your initial probationary period (typically six months), you may be fired for any reason or for no reason, as long as the reason does not constitute illegal discrimination on the basis of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin.

When do I have to be paid overtime?

You must be paid overtime whenever you work more than 40 hours in a single week. Overtime is to be paid at a rate of 1½ times your usual hourly wage. MCA §39-3-405. Some exceptions to the usual standard for overtime compensation, are listed at MCA §39-3-406. Some occupations (like bus drivers or miners) have limits on how many hours can be worked, usually for safety reasons. See MCA Title 39, chapter 4 for details.

How often must I be paid?

If no other period of time is specified, you are to be paid semimonthly (twice a month, approximately every two weeks). You must be paid within 10 days of the end of your pay period. MCA §39-3-204.

Can I be fired for any reason?

During your initial probationary period (typically six months), you may be fired for any reason or for no reason, as long as the reason does not constitute illegal discrimination on the basis of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin. MCA §39-2-904, 49-2-303.

After your initial probationary period (which could be less than six months or up to a year if the employer has a specific

policy), you can only be fired for “good cause.” MCA §39-2-904. “Good cause” means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer’s operation, or other legitimate business reason. MCA §39-2-903.

Do I have to be provided breaks or vacation time?

Although breaks or rest periods are common in the industry, an employer has no obligation to provide such breaks. If your employer does give you a break or rest period of less than 30 minutes, the time must be paid. An employer also has no obligation to give you a meal break. However, if your employer does give you a meal break, the break is only unpaid (i.e. you clock out) if the break is 30 minutes or longer and you must be completely relieved from your job duties. Admin. R. Mont. 24.16.1006. Employers are not required to provide vacation time or paid holidays.

Can I be drug tested on the job?

Yes, but the employer must follow a very detailed set of guidelines, and make a written copy of their policies and procedures available to you. All drug testing is to be at the employer’s expense. MCA §39-2-207.

Can my employer make me take a lie detector test?

No. See MCA §39-2-304.

What is worker’s compensation?

“Work comp” is insurance that will cover your medical expenses if you are injured or develop an occupational disease while on the job. It is not the same as a general health insurance policy. Work comp also provides payment for wages lost because you were injured on the job.

Work comp does not cover your medical expenses if you get sick or are injured off the job. You cannot be fired for filing a worker’s compensation claim and your employer cannot prohibit you from filing. MCA §39-71-317.

A few specific occupations are not required to carry worker’s compensation insurance, and they are listed at MCA §39-71-401. If you are supposed to be covered by work comp and are injured on the job, but your employer does not carry a policy, the State of Montana has a special fund to help cover your injuries. MCA §39-71-501 & -503.

What is an “independent contractor”?

Put simply, an independent contractor is someone who is self-employed. For example, you have set up your own business to design web pages for others. A person who hires an independent contractor does not have to carry work comp on that person. MCA §39-71-417. However, to be an independent contractor, you must apply for an independent-contractor exemption certificate and meet certain criteria. Without one, you are usually considered an employee of the person hiring you.

This is an area where many employers are tempted to not follow the law. You may be told that you are an “independent contractor” for both tax and work comp purposes even if your employer dictates the conditions of your employment, such as the hours you work, the methods by which you complete tasks, and so on. However, this violates Montana law.

What is unemployment insurance and how do I get it?

Unemployment insurance is a partial compensation for your wages that you may receive if you are laid off from a job through no fault of your own. It does not cover you if you quit, are fired for certain misconduct, or cannot work due to illness. If your employer lays you off, you may apply to the Unemployment Insurance Division at <http://app.mt.gov/ui4u/index>.

What is sexual harassment?

It is a form of unlawful discrimination prohibited by federal and state law. In general, it is unwelcome sexual behavior on the part of a supervisor, co-worker, or customer. Such conduct could be sexual comments, pressure for sexual favors, inappropriate touching, or even a sexual assault. Or it might be one employee subjecting another to unwelcome sexual jokes or degrading posters of women or men. MCA Title 49.

Can I be fired for getting pregnant or having a child?

Absolutely not. An employer cannot terminate an employee for getting pregnant, cannot refuse to grant a reasonable period of maternity leave, and cannot force you to take maternity leave for an unreasonable period of time. As a general rule, when you return to work, you must be reinstated to your original job or to an equivalent position with equivalent pay and accumulated seniority. MCA §49-2-

310 & -311.

What can I do if I experience discrimination in the workplace?

You can contact the Montana Human Rights Bureau at:

1625 11th Avenue

P.O. Box 1728

Helena MT 59624-1728

Phone: 406-444-2884 or 1-800-542-0807

<http://erd.dli.mt.gov/human-rights-bureau.html>

Can my employer deduct anything from my paycheck?

Yes, but only for certain purposes. For example, your employer could deduct funds for the following:

- State and federal income tax.
- Union dues.

- Any losses caused by your dishonesty, willful misconduct, or gross negligence.
- Specific deductions for which you previously gave written authorization to the employer to make.

What is FICA?

The Federal Insurance Contributions Act (FICA), commonly called Social Security, is a payroll tax that provides retirement, disability, and death benefits to workers. The employer pays half of the premium and you pay the other half.

Do I need a Social Security number to get employment?

Yes, unless you are a legal resident who is not a U.S. citizen, in which case you need an Individual Taxpayer Identification Number (ITIN). Your employer is required to report your wages to the Internal Revenue Service (IRS) — the agency that collects federal taxes from taxpayers. The IRS, in turn, uses your Social Security number or ITIN to process your federal tax payment. For more information, check with your local Social Security office or go to www.ssa.gov. Or you could call 1-800-772-1213.



Taxes

How do my tax obligations change when I turn 18?

You are obligated to pay state and federal income tax regardless of age, even when you were a child, if you have taxable income. Your family may have handled this responsibility for you in the past. However, once you are 18, you are responsible for your own taxes. The penalties for not paying taxes (which could include fines and even jail time) become your responsibility. If you have income, it is best to assume that you will need to file tax returns.

How do I file tax returns?

You can download forms from the Internet, or purchase special computer software that helps you through the process. You can also obtain tax forms at your local public library, and free assistance in filling out tax returns is usually

offered in most communities. There are booklets containing detailed step-by-step directions that come with these forms. For most people between the ages of 18 and 21, filing a return is fairly uncomplicated.

How do I know how much tax I owe?

In most cases, if you have a job, your employer will withhold taxes from each paycheck. At the end of the year, you will get a form from your employer called a W-2 that shows how much tax was withheld. In many cases, especially if you work only part-time, you will have had more tax withheld than you actually need to pay and are eligible for a tax refund at the end of the year – but only if you file a tax return with the IRS and with the Montana Department of Revenue.

In some cases, you will have income from other sources. If you worked for yourself and were paid by your customers instead of by an employer, you will have to track your own

income and pay taxes on it. If you were an independent contractor, that is, you worked for yourself, and no one withheld taxes from your earnings, the people for whom you did work may send you a Form 1099 instead of a W-2 (See Employment section for a more detailed definition of an independent contractor). A 1099 tells the IRS how much money they paid to you. The IRS will cross check these forms, and you are responsible for paying your own taxes on income where there was no withholding.

My parents are still claiming me as a dependent, does that change my taxes?

Even before you turned 18, you paid taxes on any income you earned, and could file a tax return at the end of the year if you owed additional taxes or were entitled to a refund. However, your parent(s) or legal guardian(s) probably claimed you as a dependent and thus were able to obtain a small tax deduction by doing so. As an adult, when you file a tax return, you may claim a type of tax deduction called a personal exemption for yourself, but only if no one else claims you as a dependent. Even if you are over 18, you might still be claimed as a dependent on a parent's or guardian's tax returns. If you are claimed, you will need to avoid making the personal exemption claim.

IRS Publication 501 explains this in more detail. It is available on the internet at: <http://www.irs.gov/pub/irs-pdf/p501.pdf>.

Where can I get help?

Most people who rent a home and only have earned income from a job and perhaps a small savings account can do their own taxes. However, if you have questions about taxes, you may have to pay for professional help.

Attorneys and certified public accountants (CPAs) have the highest qualifications and can provide you with specialized expertise. They can also refer you to free resources if your finances are limited. If you own a home or other valuable property, have stock in a company, run your own business, inherited a large sum of money, or otherwise have a complicated tax situation, you should seek professional assistance.

You can get more help at these websites:

<http://www.irs.gov/formspubs/index.html>

<http://revenue.mt.gov/default.mcp>

Housing

Buying A House

Unless you have several hundred thousand dollars saved up, you will most likely need to take out a mortgage loan from a bank, a mortgage company, or some other lender to purchase a home. Lenders will require you to sign a promissory note. The promissory note legally requires you to pay the loan back.

When purchasing a home, the lender will require a mortgage on the property. Ask your lender about their mortgage options and decide which one will work best for you. The mortgage is the lender's way of ensuring you continue to make your payments on the loan. Missed payments may result in the lender foreclosing on your property – that is, taking the property away from you.

Now, on to house-hunting...

If you choose to use a real estate agent to show you homes, remember that the agent represents and is paid by the seller

of the home. You may want to hire your own buyer's agent to make sure your interests are represented fairly. Real estate agents only get paid when a sale is completed, so a buyer's agent is probably a good idea if you can afford it.

What must the seller tell you about the home?

So, you have a loan, a buyer's agent, and you have found what you think might be the home of your dreams. There are several things you should do before drafting a Purchase Agreement. First, a seller of a home in Montana is required by law to disclose all pertinent facts known to the seller about the home and should disclose any known defects. Ask not only the seller's real estate agent, but the seller himself about the home. Do not be afraid to be specific. Ask if the home has been remodeled or added on to. Ask about the plumbing, heating, and electrical systems in the home. Ask if the seller has had any problems at all with any part of the

property. Even if you forget to ask, the seller is required to fill out a disclosure statement and if he knows of any problems, he must list them on the disclosure.

What if the seller says he does not know of any problems with the home or the property? You can choose to take his word for it, or you can hire an independent home inspection service to check the place out for you. If you can afford an inspection service, it may save you from extensive repair costs to your new home in the future.

The Purchase and Sale Agreement

When you are satisfied that the home you wish to purchase is in good condition, you will need a Purchase and Sale Agreement. This Agreement should contain at least the following: buyers' and sellers' names and addresses; purchase price; mortgage or financing information of buyer; legal description of the property; assurance of good title to the property; condition of the property at closing; the expenses and how they will be divided; method of handling escrow; seller's statement about the condition of the property; closing date; date of buyer's possession; closing costs statement; sales agent and commission due; and the parties' signatures. Reviewing the agreement with a real estate attorney before closing can be helpful if you can afford to pay for it.

Renting a property

Before you decide to rent an apartment, house, or any piece of property, you need to be aware of your rights and responsibilities as a tenant. You also need to know the rights and responsibilities of your landlord. Most landlords require you to sign a written rental agreement or lease before allowing you to move in, but verbal rental agreements can be just as valid. Read over the written agreement or review the terms of your verbal agreement with your landlord carefully. In order to be valid, the terms of the lease must comply with Montana law. Your landlord cannot require you to be responsible for things the law says he must do.

What are your responsibilities toward your rental home?

As a tenant, you will be required to keep your rental property in a reasonably clean and safe condition. This includes disposing of waste appropriately, keeping plumbing fixtures clean, and using the facilities provided by the landlord in a reasonable manner. Not only are you responsible for your own behavior, but you and your guests are expected not to unnecessarily disturb your neighbors. You and your guests should not damage, deface, impair,

destroy, or remove any part of the property. The law prohibits you and your guests from engaging in any activity that may result in damage to the property or injury to your neighbors.

Tenants are specifically prohibited from manufacturing illegal drugs, operating an unlawful clandestine laboratory, and participating in gang activity within a rental property. If you violate the above conditions, your landlord may terminate your rental agreement by providing you with written notice of the specific reasons for termination at least three days prior to termination of the agreement.

Your landlord is required to do whatever is necessary to keep the rental property in a fit and habitable condition. The landlord is responsible for keeping any common areas on the premises clean and safe. The upkeep of the electrical, heating, ventilation, air-conditioning, and existing appliances are all the landlord's responsibility. The landlord must have an approved smoke detector in good working order in each unit and must supply hot water and heat at all times between Oct. 1 and May 1.

Can you get out of a rental agreement early?

If for some reason you decide to terminate your rental agreement before the term of your lease has expired, you may be liable to the landlord for the rent to the end of the term. You might also have to pay any actual damages the landlord suffered because of your decision to break the rental agreement. To avoid having to pay, you might try talking to your landlord and explaining why you need to terminate the rental agreement early. If you do not have a rental agreement and you pay rent weekly, you or the landlord can terminate the tenancy by providing the other with written notice at least 7 days before the termination date. If you pay rent monthly and do not have a rental agreement, the written notice of termination must be provided to the other party at least 30 days, prior to the date of termination.

What happens to the security deposit?

After you or your landlord terminates the rental agreement, the law outlines specific procedures for the return or retention of the security deposit. An inspection of the premises must be performed either by the landlord and tenant together, or the landlord himself. Following the inspection, the landlord must provide a written notice of any cleaning that still needs to be done to restore the unit to its original condition.

Your landlord must allow you 24 hours to perform the

additional cleaning. If there is no need for additional cleaning and no other reason to hold the security deposit, your landlord must return the full amount to you within 10 days. After allowing you to clean, the landlord has 30 days to send you an itemized list of any deductions from the security deposit and return the remaining amount.

What if the landlord wants to evict you?

When the landlord terminates the rental agreement and you refuse to leave, the landlord may file an action for possession of the premises. This is the beginning of the eviction process in Montana. The landlord must serve you with a copy of the action for possession. Regardless of the circumstances, you should always file an answer with the court in order to avoid a default judgment against you. You have 10 days from the date you are served with the petition to file your answer. The court must hear the case within 20 days of your first appearance or the answer date on the

summons. The court will issue a ruling on the case within 5 days of the hearing.

Without a judgment in court, your landlord is not permitted to physically remove you from the premises, make threats, change the locks, or cut off services to the unit. Your landlord may be liable for damages in court for these behaviors. If the court issues a judgment in favor of the landlord, you must move out and pay any damages awarded by the court.

For more information concerning housing issues, check out the following websites:

www.montpirg.org

www.hud.gov/local/mt/renting/tenantrights.cfm

www.montanalawhelp.org

For legal help with housing issues, contact: Montana Legal Services HelpLine at 1-800-666-6899 or contact an attorney specializing in landlord-tenant or real estate issues.

Sexual Relationships

Age of consent and rape laws

Anyone under the age of 16 is considered legally incapable of consenting to sexual intercourse or any other type of sexual contact or conduct. MCA §45-5-501, 45-2-101, 45-5-625. The law applies to people who are under 18 as well as those over 18, and the age gap between the two parties does not matter.

Therefore, having sexual intercourse with someone under the age of 16 can be charged as sexual intercourse without consent (commonly known as rape), no matter how old you are, and even if they tell you that they consent.

Sexual intercourse is very broadly defined and includes penetration of almost any body orifice of one person by almost any body part of another person – or a foreign object manipulated by another to cause bodily injury or humiliate, harass, degrade, or cause sexual arousal. Any penetration, however slight, is sufficient. MCA §45-2-101.

Other types of sexual conduct or contact with someone under age 16, no matter how old you are and even if they say they consent, may be charged as sexual assault or sexual abuse of children. MCA §45-5-502, 45-5-503, 45-5-625.

Further, if the victim is under the age of 16 and the

offender is 3 or more years older than the victim, an act charged as sexual assault is a felony with a penalty of 4 years to life in prison and a fine of \$50,000. MCA §45-5-502. If you are over 18, then anyone under the age of consent is 3 years younger than you.

If the victim is under the age of 16 and the offender is 4 or more years older, an act of sexual intercourse without consent is a felony and also has a penalty of 4 years to life in prison and a fine of \$50,000. MCA §45-5-503. Further, when the victim is under age 14, you cannot claim as a defense you didn't know the victim was underage.

Sixteen- and 17-year-olds can consent to sexual acts, but a person may be charged with a crime if he engages in a sexual act of any type while the other party, regardless of age, is incapacitated by drugs or alcohol and unable to give consent. Furthermore, if someone over 18 provided the drugs or alcohol to someone underage, they could also be charged with endangering the welfare of children and assorted crimes related to unlawful transactions with children.

How does the law protect me if I am of legal age?

Friendship, dating, or even marital status do not convey an invitation to sexual intercourse. Date or no date, it is rape if one of you says “no.”

Further, if you have been subjected to a sexual act without your consent, you should seek help from your local rape crisis hotline, domestic violence shelter, police, or hospital.

A list of crisis resources in Montana is available through

the National Domestic Violence Hotline for referrals and support: 1-800-799-SAFE (7233) and at www.womenslaw.org/MT/MT_links.html.

Montana Coalition Against Domestic Violence

PO Box 633

Helena MT 59601

(406) 443-7794

Toll Free (888) 404-7794

mcadsv@mt.net

mcadsv.com

Marriage and Families

What is the age of consent to marriage in Montana?

No one under the age of 16 can get married in Montana. People who are 16 or 17 can only get married with parental permission or approval from a judge. MCA §40-3-402(1)(c).

How do I get married in Montana?

You have to get a marriage certificate at the county courthouse and present proof of age. Women must also provide a medical certificate that states that they have had a blood test for immunity from rubella (also known as German measles), a disease that can harm an unborn child in the womb if the mother contracts it during pregnancy. MCA §40-1-203.

You may have the marriage ceremony performed by a minister of any religious denomination, a judge, or any public official whose powers include solemnization of marriages. MCA §40-1-301.

Montana also recognizes common-law marriages. MCA §40-1-403. There is no specific definition of a common-law marriage other than a man and woman holding themselves out to the public as husband and wife. This can be done with one instance, i.e., signing into a motel as Mr. and Mrs., or by a series of such “displays.” There is no legal requirement that it take place over a period of time. The circumstances of a common-law marriage are determined on a fact basis with each case. A common-law marriage should not be confused with a declaration of marriage and is

a written statement declaring the marriage of the parties and must conform to the statute. MCA §40-1-323 and 324.

What types of marriages are prohibited in Montana?

Marriages between brothers and sisters or half-brothers and half-sisters, first cousins, those between an uncle and a niece or between an aunt and a nephew, and marriages between persons of the same sex are not allowed in Montana. You cannot be married to someone who is married to someone else until there has been a formal dissolution of the previous marriage (commonly known as a divorce). MCA §40-1-401.

Does my spouse have a duty to support me?

Both spouses are obligated to provide for the support of the other and for any minor children (below the age of 18). MCA §40-2-102.

I am in a gay/lesbian (GLBT) relationship. Is that illegal?

No. Although, until recently Montana Code contained an entry that prohibited “deviate sexual conduct.” Regardless of the law on the books, Montana Supreme Court decision *Gryczan v. Montana* (1997) protected consenting acts in the privacy of one’s home. The 2013 Montana Legislature passed Senate Bill 107, and on April 18, 2013,

Gov. Steve Bullock signed the bill into law, which struck the outdated language from Montana Code.

You may obtain additional legal protection for yourself and your partner – such as a right of visitation should one of you be hospitalized, or a power of attorney if one of you is incapacitated – by consulting with a private attorney.

Gay/lesbian partners can also make provision for their partner in wills and other estate planning devices to protect their financial interest. Sample documents for legal planning for GLBT couples in Montana are available at: <http://www.gaymontana.org/family/estate.html>.

The Human Rights Campaign can provide you with further assistance and referrals to resources in Montana. <http://www.hrc.org/issues/marriage>.

You may also provide for a partner in a testamentary device such as a will to ensure that they will not be left out financially in the event of their partner's death.

What is domestic violence?

Partner and family-member assault is against the law. MCA §45-5-206. It occurs whenever someone causes bodily injury to a partner or family member or causes reasonable fear of bodily injury.

Domestic violence can also include stalking, which is following someone around after being told not to, harassing, threatening, or intimidating someone in person or by mail, or by any electronic communication (including telephone and e-mail). MCA §45-5-220.

Domestic violence is abuse that cuts across all cultures, ethnic backgrounds, education levels, and income brackets. It impacts gay and lesbian people as often as heterosexuals. It happens to teenagers as well as senior citizens, and to men

as well as women. Remember, NO ONE has the right to hurt you.

What resources are available to me if I am in an abusive relationship?

Physical or psychological violence against another person, spouse, partner, or child is not acceptable and should be reported. It requires fortitude and courage on the part of the victim.

Most Montana communities have a shelter or support system for people who are in need of help. You may contact your local police department or hospital. If you have been abused, you need to call the police immediately, seek hospital treatment and keep a record of injuries and, when possible, the names of witnesses, police officers, and medical attendants. Also keep copies of all medical reports and take pictures of any physical evidence of abuse.

In many cities, such as Missoula, the YWCA or a women's resource center can either provide assistance or be able to direct you and any children to a safe location and other resources available in your community. Physical or psychological violence against another person, spouse, partner, or child is not acceptable and should be reported. It requires fortitude and courage on the part of the victim. A child who witnesses or experiences abusive behavior becomes impacted and has an independent right of protection even separate from the adults.

For a list of statewide resources, you may contact:

Montana Coalition Against Domestic and Sexual Violence

P.O. Box 633

Helena MT 59624

Phone: 406-443-7794

Toll-free: 888-404-7794

mcadsv.com

Pregnancy and Parenting

Is abortion legal in Montana?

Yes. You must be informed of the medical risks associated with the procedure and sign a consent form. MCA §50-20-104, 106. Parental notice or judicial waiver is required

for people under 18 or those who have been declared incompetent by a court. MCA §50-20-240, 205, 212. If you are over 18, there is no notice requirement. The father of the child does not have to be notified.

If I have a child, do I have to reveal the identity of the child's father?

If you seek child support enforcement, apply for public assistance, or otherwise wish to obtain help supporting your child, you usually will be required to identify the child's father. If you put the child up for adoption, the state has an obligation to try to locate and notify the father of the child prior to terminating the parental rights of either or both birth parents. You may be subject to civil or criminal penalties if you fraudulently conceal information.

However, if you are a survivor of domestic violence, the father of your child does not need to know where you are. Your personal information and location will be protected if you request it.

If my girlfriend gets pregnant and we are not married, do I have to support the child?

Yes. Both parents are responsible for support and education of the child until it is 18. MCA §40-6-211. If one of you fails to provide required support, the State of Montana Child Support Enforcement division or the other parent can take the case to court. A judge can also order a portion of your wages to be deducted from your paycheck and used for child support payments. MCA Title 40, Chapter 5.

Does an unmarried father have any parental rights?

Under Montana law, anyone who engages in an act of sexual intercourse with a person of the opposite sex is presumed to be aware that a pregnancy could result. MCA §42-2-204. A person named on a child's birth certificate or the husband of the child's mother is presumed to be the father of the child unless proven otherwise by paternity testing and court action. Any party may bring an action for the determination of paternity or the existence of a father-child relationship. MCA §40-6-105, 107.

A father who wishes to preserve his parental rights in the event that a child is born may register with the putative (or supposed) father registry that is part of the vital statistics

bureau of the Department of Public Health & Human Services. If registered, he will receive notice if the child is to be placed for adoption. Beyond that, it is the responsibility of the father to assert any parental rights. MCA §42-2-230.

A father may also bring a civil action to determine his parental rights and duties. MCA §40-6-101 et seq. In addition to the father, if there is no presumed father, a number of other persons may institute such an action. MCA §40-6-107(2).

Both parents are responsible for support and education of the child until it is 18. MCA §40-6-211. If one of you fails to provide required support, the State of Montana Child Support Enforcement division or the other parent can take the case to court.

Reporting child abuse or neglect

If you have reasonable cause to suspect that a child has been abused or neglected, you may call the State of Montana's 24-hour child abuse hotline at: 1-866-820-5437 (KIDS). You may also contact the Department of Health and Human Services Child Services Division, the county attorney, or local law enforcement offices, police, and sheriff.

What is the Newborn Safe Haven law?

The Montana Safe Haven Newborn Protection Act, sometimes called a "baby drop-off law," is a law that helps prevent mothers who cannot care for their infants from abandoning unwanted newborns in dumpsters, cardboard boxes, or other unsafe locations. A newborn's parent (or other individual with legal custody) can now voluntarily surrender the infant to any "emergency services provider" and not risk prosecution for child abuse or abandonment. MCA Title 40, Chapter 6. A "newborn" is a child who reasonably appears to be no more than 30 days old. An emergency services provider is a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the fire department, hospital, or law enforcement agency; or any law enforcement officer who is in uniform or is otherwise identifiable. MCA §40-6-402.

Can my parental rights ever be taken away?

Yes. Montana law has determined that it is the policy of the state of Montana to provide for the protection of children whose health and welfare are or may be at risk.

MCA §40-3-101. In these instances, the state of Montana has the authority to step in and assume a parental role for the welfare of the child. This becomes a separate legal proceeding and is of a “quasi” criminal nature. Some of the reasons you could lose your parental rights include:

- Abandonment.
- Severe abuse (which includes but is not limited to

abandonment, torture, chronic abuse, sexual abuse, or chronic, severe neglect of a child. MCA §41-3-423.)

- Repeated incidents of abuse resulting in a court ordered treatment plan, and failure to comply.
- Conduct or condition of the parents rendering them unfit that is unlikely to change within a reasonable time. MCA §41-3-609.

Divorce

How and why you can get divorced

Only one person in a relationship has to believe that the union is irreparably damaged to obtain a divorce. There are a few ways to go about getting a divorce.

Divorce in Montana is called “Dissolution of Marriage.” This is what the court documents you are looking for will say.

The first, and most highly recommended, way to get divorced is to hire a private attorney. This will cost quite a bit of money with fees ranging from perhaps less than \$1000 to fees without any upper limit, plus any costs. It is much cheaper and easier to get married in most cases than it is to get divorced! The details of each marriage impact the complexity and expense of a dissolution with such factors as length of marriage, assets, debts, children, and a large variety of factors with each one in scrutiny.

The second way to get divorced is pro se, meaning representing yourself without hiring a lawyer. In order to have a pro se divorce, the partners should agree on EVERYTHING (division of debts and assets, who will have the children when, etc.) You can go to www.MontanaLawHelp.org and print out the divorce packet if you want to do things pro se. Be ready though, the packet is over 100 pages long. It includes instructions on how to fill the form out and how to file it with the local district court clerks. You can also get these forms at some court clerks’ offices.

If you are unable to pay the filing fees you may file a petition of inability to pay costs and be relieved of that obligation.

Option of mediation

Mediators cost anywhere from \$60 to \$250 an hour. The amount of time it takes to get through a mediation depends entirely on your willingness to reach settlement.

The average divorce mediation takes about six hours, but many take much longer. One should go into mediation with an open mind, ready and willing to give and take with the spouse partner.

Mediators will not fill out court paperwork for you, so if you are using mediation to help you through a pro se divorce, you should go through the Parenting Plan and Debt & Asset division paperwork FIRST, then go to the mediator to help you work out the things you can’t agree on. The courts have a list of mediators on hand for referrals.

In the event that you do not reach an amicable settlement, the district court has the authority and ability to divide and distribute all assets and obligations of the marriage as well as determine the parenting rights and duties of each parent.

What are your obligations to your spouse (or children) after the divorce?

This depends entirely on the settlement you reach with your spouse or the judgment issued by the court. In the event that you do not reach an amicable settlement, the district court has the authority and ability to divide and distribute all assets and obligations of the marriage as well as determine the parenting rights and duties of each parent.

In contested cases, the district court has the authority to appoint a Guardian ad Litem to represent the interests of any child(ren) of the parties. The district court in either case has continuing jurisdiction over that dissolution proceeding in the event that issues arise after the Decree of Dissolution has

been entered.

Normally, a spouse will have to either pay a part of the children's expenses or send money to the other parent for said expenses (child support). You will also have an obligation to visit the children at times specified in the Parenting Plan. You might also have to pay maintenance (alimony) to a spouse who has been living off of your paycheck for a long time. Finally, you might be responsible for taking the kids to school, or taking them to the doctor, or buying them clothing, or some other specific parenting duty.

The most important thing to remember is to follow your divorce paperwork. IT IS A COURT ORDER. If you do not, you can be charged with contempt of court, which could get you a \$500 fine and 6 months in jail.

Child support must be determined according to the Montana Uniform Child Support Guidelines and may not be

established outside those guidelines except in very limited circumstances. MCA §40-4-204. Child support is always subject to review within the provisions of the law and the Child Support Enforcement Division of the Department of Health and Human Services will assist you in determining and collecting child support.

Parenting, child support, maintenance, determination, and distribution of marital assets and obligations can become a very complex matter and require the assistance of a competent attorney familiar with this type of law.

For more help go to:

Montana Legal Services Association

(406) 442-9830

HelpLine 1-800-666-6899

www.mtlsa.org

Driving, and Driving Under the Influence

Driving is a privilege granted to you and regulated by the State of Montana. It is your responsibility and obligation to be a safe driver. Never drive under the influence of drugs or alcohol. (NOTE: People caught driving under the influence of drugs other than alcohol – marijuana or meth, for example – are subject to the same penalties as a DUI based on drinking.)

Here are some important things you need to know.

Are my parents still liable for accidents I get in after I turn 18?

Typically no, not even if they signed as your sponsor when you first got your license. Their liability ends when you turn 18.

Are all owners of a motor vehicle required to have insurance?

Yes. An owner of a motor vehicle that is registered and operated in Montana, and is used by the owner or by another with permission, has to have proof of financial responsibility or insurance.

Insurance must provide for liability coverage of at least \$25,000 per person and \$50,000 for two or more persons because of bodily injury or death in any one accident; and \$10,000 because of damage to the property of others in any one accident.

Proof of responsibility or insurance is required – you should carry your proof-of-insurance coupon from the insurance company in your glove box, wallet or purse. The person operating the vehicle is the person responsible for making sure the vehicle is insured before driving the vehicle. This means that the driver will get a ticket for no insurance – not the owner. Penalties for not having insurance include fines from \$250 to \$500 and imprisonment up to 6 months and suspension of the car's registration and your driver's license. MCA §61-6-301.

What happens if I get stopped for drunk drinking?

A person of legal drinking age in Montana (21 years old) is inferred to be under the influence of alcohol (DUI) with a blood-alcohol level of .08.

Without making an arrest, the officer might ask you to perform sobriety tests at the spot where he stopped you, or ask you to submit to a preliminary breathalyzer test to determine your blood-alcohol level.

If you are a driver in Montana, you have already given consent to a blood or breathalyzer test. You may refuse to submit to such a test, but if you refuse Montana law allows a peace officer to seize your driver's license. The officer will issue a five-day temporary driving permit. Your license will then be subject to suspension or revocation. You have the right to appeal within 30 days and have a hearing in district court.

Proof of refusal to submit to a test by a person under arrest is admissible in any court action. If you do not request a hearing, or if after hearing the court determines that you are not entitled to a license, your driver's license will be suspended for six months on the first refusal to take a breathalyzer test – and you will not receive a provisional license, meaning you can't drive to work, school, or anywhere else. It's no driving, period. MCA §61-8-402, 403, 404

Can I only get a DUI while driving in my truck or car?

No. The term "vehicle" is loosely used to describe any vehicle that can be used for transportation on a public highway. The only exception is for bicycles.

What happens if I get a DUI when I'm under the age of 21?

If you have a blood-alcohol level of .08, you are subject to the full DUI penalties, including jail time (see section below), even if you are only 18.

However, if you are under 21 years old, you can receive a "baby DUI" if your blood-alcohol level is only .02, equivalent of one alcoholic drink or less.

The penalties for a "baby DUI" will be: For the first conviction, a fine of not less than \$100 or more than \$500 and suspension of driver's license for 90 days.

For a second conviction, a fine of not less than \$200 or more than \$500, incarceration of not more than 10 days, and suspension of driver's license for 6 months.

For a third or subsequent conviction, a fine of not less than \$300 or more than \$500, incarceration for not less than 24 consecutive hours or more than 60 days, and suspension of driver's license for 1 year. MCA §61-8-410.

What are the full DUI penalties at age 21 or at .08 blood-alcohol level?

For the first offense, the penalty is jail time of 24 hours to 6 months, except if a passenger is 16 years or younger, the penalty is jail time of 48 hours to 12 months. The fine for a first offense is not less than \$300 or more than \$1000, and if a passenger is 16 years or younger, not less than \$600 or more than \$1200. Except for the initial 24 hours of the jail term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment.

For the second offense, a fine of not less than \$600 or more than \$1000, imprisonment of not less than 7 days or more than 6 months, with at least 48 consecutive hours in a county jail. Except for the initial 5 days of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program.

For the third offense, imprisonment of not less than 30 days or more than 1 year with 48 consecutive hours in a county jail, a fine of not less than \$1000 or more than \$5000.

These penalties double if there are one or more passengers in the vehicle who are under age 16. MCA §61-8-714.

What happens if I get a fourth DUI or excessive alcohol concentration violation?

On conviction you are found guilty of a felony and shall be punished by imprisonment of 13 months with no suspension and no eligibility for parole. And the fines and other penalties become much stiffer.

What happens to my insurance rates if I'm convicted of a DUI?

If you are convicted of DUI or any other serious driving infraction, an insurance company is likely to cancel your auto insurance policy, or at least sharply increase the amount you pay for the policy.



Possession of Alcohol

What is the current legal drinking age in Montana?

Montana's Constitution allows the establishment of the legal age for purchasing, consuming, or possessing alcoholic beverages. In 1987, Montana's legal drinking age changed from 19 to 21. MCA §45-5-624.

Are there any exceptions to this?

Yes. The only exception to the consumption rule in Montana is if your parents, a religious official, or medical professional provide you non-intoxicating quantities of alcohol for religious or medicinal purposes. A "non-intoxicating quantity" is defined as a blood alcohol level of .05 or less. However, the blood alcohol level for operating a motor vehicle when you are under the age of 21 is .02. That equates to virtually any alcohol in your system, in an intoxicating quantity or not.

May the state change the drinking age?

Yes. Montana's Constitution allows the establishment of the legal age for purchasing, consuming, or possessing alcoholic beverages. Buying beer or liquor is considered a privilege rather than a right, so a state may change the drinking age.

What are some examples of underage drinking violations?

- Being in possession of alcoholic beverages.
- Obtaining or attempting to obtain alcoholic beverages.
- Being on the premises of a liquor-serving establishment, like a bar or saloon, without a parent, guardian, or spouse who is of legal drinking age.

- Falsely representing age to obtain alcoholic beverages.
- Carrying, obtaining, making, altering, duplicating, or presenting a false identification card.
- Operating a vehicle, motorboat, sailboat, water skis, surfboard, or similar device while under the influence of alcohol.

What will likely happen if I'm arrested for a drinking violation?

If you are caught drinking underage you will be charged with a misdemeanor offense. If you are caught attempting to purchase alcohol, you also will be charged, even if you didn't succeed in obtaining it.

If you are caught drinking underage you will be charged with a misdemeanor offense. If you are caught attempting to purchase alcohol, you also will be charged, even if you didn't succeed in obtaining it. Your sentence will vary depending on your circumstances, but you almost always will have to perform community service, take a substance abuse information course, and pay a minimum fine.

In some cases, you might be ordered to obtain a chemical dependency evaluation and you can also lose your driver's license. Section reference: MCA §61-8-410, 45-5-624, 16-6-305.

Are there situations where someone under 21 can be on the premises of an establishment that sells alcohol?

Yes. You may be on the premises if you are accompanied by a parent, a guardian, or your spouse and provided that this person is above the age of 21. You also must be at the premises with the intent of buying food or nonalcoholic beverages.

There also is an exception if you are 18 and you are employed at a location that is licensed to serve alcohol.

There are also a number of locations that are provided general exceptions; such as restaurants, hotels, bowling alleys, public athletic fields, or public buildings.

Drug Laws

Once you turn 18, you are considered an adult under state and federal law. Except for the possession and consumption of alcoholic beverages, you have all of the responsibilities and benefits of adulthood. Further, if you violate state or federal criminal laws, including drug laws, you will be prosecuted as an adult.

This section attempts to provide an overview of the potential penalties to which you may be subject should you be convicted of violating the drug laws of the state of Montana. Not covered are the potential penalties for the violation of federal drug laws. You should understand that punishments under federal drug laws are significantly more severe than Montana drug laws.

Should you be convicted of a federal drug offense, even if you are a first-time offender, you cannot expect to be able to enter into some type of pretrial diversion program. Under state law, it is not uncommon for first-time drug offenders to receive a suspended sentence, or a deferred imposition of sentence. Such is not the case in the federal system. If you are convicted of a drug crime in federal court, you most likely will go to prison. Further, there is no parole in the federal system. In the federal system, if you do the crime, you will do the time.

This being said, the following provides a synopsis of the potential penalties for violation of drug laws of the state of Montana.

Criminal distribution of dangerous drugs

Under MCA §45-9-101, it is a crime to sell, barter, exchange, give away, or offer to sell, barter, exchange, or give away any dangerous drug. As defined under the law, the list of “dangerous drugs” is broad. However, the definition includes, but is not limited to, methamphetamine, marijuana, cocaine, hallucinogenic mushrooms, LSD, heroin and other opiates (including prescription opiates), ecstasy, anabolic steroids, and depressants.

A person convicted of distribution of dangerous drugs faces a wide range of potential penalties, depending how a drug is listed in Montana law. The penalties range from not less than one year to more than life in the state prison. In addition, an individual is also subject to a fine of not more than \$50,000.

Under state law, it is not uncommon for first-time drug offenders to receive a suspended sentence, or a deferred imposition of sentence. Such is not the case in the federal system. If you are convicted of a drug crime in federal court, you most likely will go to prison. Further, there is no parole in the federal system.

Also, if an individual has one or more prior convictions for criminal distribution of certain dangerous drugs, the potential penalties increase.

Moreover, as an adult, if you are convicted of distributing certain types of dangerous drugs to a minor, the law provides for sentences of not less than two years and up to life in state prison. For example, if you are convicted of distributing methamphetamine to a 17-year-old, and you have a prior drug distribution conviction, the law provides for a mandatory minimum sentence of 20 years.

Criminal possession of dangerous drugs

The penalties for criminal possession of dangerous drugs (having the drugs with no intent to sell or give them to someone else) also vary. Under Montana Code Annotated, the penalties vary depending upon the type and quantity of the illicit substance. MCA §45-9-102.

In the case of first-time possession of marijuana, if the weight of the marijuana does not exceed 60 grams, it is treated as a misdemeanor and an individual can be sentenced to up to 6 months in the county jail and a fine of between \$100 and \$500. A second offense is punishable by a fine of not more than \$1000 or a jail term of 1 to 3 years, or both.

In the case of first-time possession of an anabolic steroid, a conviction is treated as a misdemeanor, with a \$100-\$500 fine or a term in the county jail of not more than 6 months, or both. Possession of other dangerous drugs – for example, methamphetamine, cocaine, or ecstasy – is punishable by up to 5 years in prison and a \$50,000 fine.

Going to Canada

One of the great perks of living in Montana is our close proximity to our northern neighbors in Canada. Because of our two nations' history of friendly relations, it is relatively easy for U.S. citizens to travel across the border. However, there are some things you should keep in mind when traveling into Canada.

First, you should be aware of what documentation is required to cross the border by land. Canadian law requires that all person entering Canada carry both proof of citizenship and proof of identity. If you are a U.S. citizen, make sure you carry proof of citizenship such as a passport, birth certificate, a certificate of citizenship or naturalization, a U.S. Permanent Resident Card, or a Certificate of Indian Status along with photo identification. Generally speaking, as long as you don't have any outstanding warrants in the U.S. or Canada, or any criminal conviction in either country, you will be granted access.

Both the U.S. and Canadian governments urge frequent travelers to join the NEXUS trusted traveler program. NEXUS members receive a special travel card that allows expedited border crossings for both private and commercial travelers throughout both U.S. and Canadian border controls. Or you might consider a "passport card." This is a special form of identification offered by the U.S. Department of State to ease identification requirements for border communities. When crossing the border by land or sea, your passport card will satisfy all identification requirements. You can apply for passport cards at numerous locations across Montana including several post offices and courthouses. To find a location, see <http://iafdb.travel.state.gov/>. The passport card can only be used for travel by land or sea. You cannot use the passport card when traveling by air; you must have a passport book.

What am I allowed to take across the border?

You should know what you can transport, or rather can't transport, across the border. Any prescription drug brought across the border must be accompanied by a valid prescription and must be in the original packaging. If it isn't, it will likely be confiscated and there could be a potential fee involved. If you are importing or exporting monetary instruments equal to or greater than CAN \$10,000 (or the equivalent in foreign currency), you must report the amount

to the Canadian Border Services Agency (CBSA) when you arrive or before you leave Canada. This applies to either cash or other monetary instruments.

You are required to have written authorization and permits to bring explosives, fireworks, and certain types of ammunition into Canada.

You are allowed to import only one of the following amounts of alcoholic beverages free of duty and taxes:

53 ounces of wine; or

A total of 40 ounces of alcoholic beverages; or

Up to 24 ounces of beer or ale.

You are allowed to bring all of the following amounts of tobacco into Canada free of duty and taxes: 50 cigars, 200 cigarettes, 6.4 ounces of tobacco, and 200 tobacco sticks. If you are a visitor to Canada, you cannot import prohibited firearms under any circumstances. You have to declare all firearms or weapons when you enter Canada. If you do not declare all firearms or weapons, they will be seized and you could face criminal charges. You need documents to prove that you are entitled to possess a firearm in Canada and you must transport it safely. Some examples of prohibited weapons/devices include: replica firearms, taser/stun guns, switchblades, butterfly knives, mace or pepper spray, nun Chaka sticks, shuriken (throwing stars), crossbows, brass knuckles, silencers, and cartridge magazines above a given capacity.

Returning to the U.S.

There are also restrictions on what you can bring back to the United States on your return from Canada. If you have been in Canada for less than 48 hours you may bring back goods up to \$200 in value. The goods will remain tax and duty free as long as they do not exceed the \$200 value. This exemption includes no more than 50 cigarettes, 10 cigars, 4 fluid ounces (150 milliliters) of alcoholic beverages, or 150 milliliters of perfume containing alcohol. If your purchases exceed the exemption, you will be subject to paying duties on all items purchased. All goods purchased in Canada must be declared. Keep your receipts!

You are prohibited from bringing back items that are deemed detrimental to the general welfare of the U.S. This includes narcotics, drugs, drug paraphernalia, obscene publications, seditious or treasonous material, lottery tickets,

fireworks, poisonous or toxic substances, and switchblade knives.

What happens if you are arrested in Canada?

You will be arrested and given the opportunity to speak to a lawyer and, depending on your offense, you may or may not be released on bail. An arrest based out of the Coutts border crossing has court proceedings at Lethbridge, Alberta. Penalties vary depending on the offense you committed. Underage drinkers will be fined. The drinking age is 18 in Alberta, Saskatchewan, British Columbia, and Quebec. It is 19 in Ontario, Nova Scotia, New Brunswick, and Newfoundland. If you are caught with a controlled substance, the penalty depends on your past criminal record. You could face jail time or a substantial fee.

Although the charges will not carry over into the U.S., and

Canada cannot extradite you for minor offenses, it is still in your best interest to return for your court date and comply with any penalty you are faced with. If you do not return for your court date, Canadian authorities will issue a warrant for your arrest. Having an outstanding warrant on your record will prevent you from being able to travel internationally. Regardless of the offense, it is likely that any penalty will include your permanent barring from entry into Canada.

Further resources for visitors to Canada:

For detailed information on how to prepare for your entry into Canada, call the Canadian Border Information Service at 204-983-3500 or 506-636-5064 (long distance charges will apply). Agents are available Monday-Friday 8:00 a.m. to 4:00 p.m. The complete Visitors to Canada Guide is available at:

<http://www.cbsa.gc.ca/travel-voyage/ifvc-rpvc-eng.html>.

Hunting and Fishing

Citizens of Montana have a rich history of hunting and fishing. It is important that you follow proper procedures during your hunting and fishing trips.

Hunting

First, be aware of the proper license that you will need for your hunting trip. There are several ways to obtain a license. You can go to the Montana Fish, Wildlife & Parks website at <http://fwp.mt.gov/hunting> and apply for a license online. You can also go to a regional office and apply for a license. Or you can go to an authorized license provider. These typically include all hunting supply stores.

You should keep in mind that different species require different permits, and some species may require you to enter a drawing (like a lottery) to obtain a permit.

It is also important to be aware of the different hunting seasons. Different species have different seasons; you can find out more information about hunting seasons at the Montana Fish, Wildlife, & Parks website, or at any place where a license is sold.

You should also be mindful of where you hunt.

Regulations differ depending on what type of land you are hunting on (public/private). Montana state law requires that anyone hunting on private land have the permission of the landowner. This can usually be obtained through matters of simple courtesy. Be sure to give the landowner proper notice of when you intend to hunt on his property. It is illegal to hunt on private land without the owner's permission. Since property ownership changes frequently, you should always do local research before you go on a hunting trip. Visit the website for the Montana Cadastral Mapping Project at <http://svc.mt.gov/msl/mtcadastral> to check land status.

You should also be mindful of where you hunt. Regulations differ depending on what type of land you are hunting on (public/private). Montana state law requires that anyone hunting on private land have the permission of the landowner.

Hunting on public land is a very common practice in Montana. Although it might be regulated differently depending on the site, most lands that are accessible by a public road or a navigable river are available to hunting by the general public. You should be aware of the status of the land you intend to hunt on. It is highly

recommended that you obtain a copy of the Montana Access Guide to State and Federal lands before your hunting trip. The guide is available for download at the Montana Fish, Wildlife & Parks website and is also available at regional offices.

Fishing

Before you go fishing, be sure that you have a proper license. Be aware of any species-specific fishing regulations. You should be sure to have a copy of the Montana Fishing Guide which is available at the Montana

Fish, Wildlife & Parks website or at any place where fishing licenses are sold.

You are allowed to fish on every river and stream in Montana. However, you should be aware of public access points. The Montana Fish, Wildlife, and Parks department has placed a multitude of access points across the state. If you visit its website, you can find any public access point in your area. The best fishing websites are: The Montana Fishing Guide at <http://fwp.mt.gov/fishing/guide> and Public Access Points for Fishing at <http://fwp.mt.gov/lands/searchfas.aspx>.

Gun Laws

Under both the U.S. and Montana constitutions, you have a right to keep and bear arms. Because of this, restrictions on gun ownership are generally small. Here are some basic points about gun ownership you should know.

What are the regulations on handguns, rifles, and shotguns ?

The State of Montana does not require you to have a permit or license before you purchase a handgun, rifle, or shotgun. However, gun dealers are subject to federal laws that do require them to obtain information from you for background checks and a record of purchase. There is no waiting period for gun purchases in Montana beyond the federal “instant check.” There are no waiting periods or background checks for purchases at gun shows, gun swaps, or gun re-sale through newspaper or other advertisements. Background checks are only completed if guns are purchased at federally licensed gun stores.

You do not need a permit to carry an unconcealed weapon, such as a rifle or shotgun, but you also cannot bring ANY weapon to certain places, such as a place where alcohol is served, a commercial carrier (such as a train or bus), school grounds (including having a hunting rifle in your vehicle in the school’s parking lot!), banks, or government buildings.

You must have a permit to carry a concealed weapon. A “concealed weapon” is any weapon from the list below that

is either partially or completely covered by the clothing of the person carrying the weapon. Weapons that can be considered concealed weapons include a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or hard substance, knife having a blade four inches long or longer, or razor, not including a safety razor. The penalty for carrying a concealed weapon without a permit is a fine not exceeding \$500 or imprisonment in the county jail for a period not exceeding six months, or both.

To obtain a concealed weapons permit, you apply through your local sheriff’s department.

The State of Montana does not require you to have a permit or license before you purchase a handgun, rifle, or shotgun. However, gun dealers are subject to federal laws that do require them to obtain information from you for background checks and a record of purchase.

Other facts about gun laws

While it is generally easy to own a gun in Montana, you can have your gun rights taken away, particularly if you commit certain crimes. If you are convicted of any domestic violence offense in Montana, your gun rights will be taken away FOR LIFE! Also, punishment is often much stiffer if a crime you committed involves the use of a gun.

Gun rights are somewhat restricted if you are under 18. Guardians can be held partially liable if their child is under 14 and has a gun unsupervised in public.

Tribal Law

There are seven reservations within the borders of the state of Montana: (1) Blackfeet, (2) Chippewa-Cree, (3) Confederated Salish & Kootenai, (4) Crow, (5) Fort Belknap, (6) Fort Peck, and (7) Northern Cheyenne. Each of these reservations is a sovereign nation in its relationship with the federal government and the state government. The State of Montana recognizes an additional tribe, the Little Shell Chippewa, which is headquartered in Great Falls.

Chief Justice John Marshall (the first chief justice of the U.S. Supreme Court) defined Indian tribes as “domestic dependent nations.”

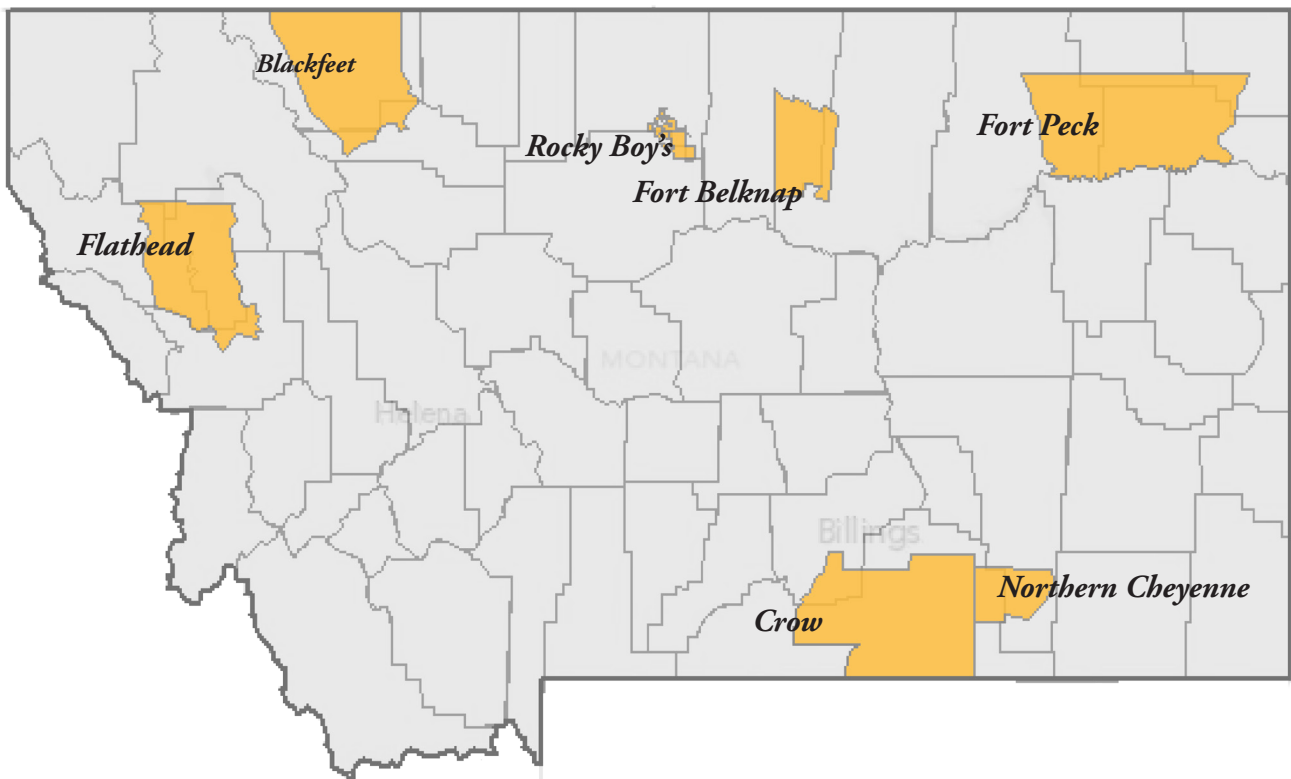
Because of an Indian tribe’s sovereignty, an Indian tribe has the right to exercise criminal and civil jurisdiction over their own tribal members. In addition, tribes can also exercise criminal and civil jurisdiction over members of other tribes and non-Indians.

“Indian law” is extremely complex and is constantly evolving. The most important piece of information for the

average citizen of Montana is that interactions with tribal members and tribal entities, either on or off the reservation, may cause you to be subject to Indian tribal law. Tribal courts may have civil jurisdiction over nonmembers if they have entered into certain business transactions or live within the reservation’s confines. Each tribe as an independent sovereign can establish its own laws, subject of course to the limitations of the U.S. Government.

Be aware that activities within the confines of a reservation – such as hunting and fishing – or with a tribal member off the reservation may have legal consequences exposing you to tribal court jurisdiction. You should be generally aware of reservations located in your vicinity and have a basic understanding of the legal ordinances within that reservation.

For more information about tribal nations in Montana, including constitutions and bylaws, visit <http://tribalnations.mt.gov>.



Joining the Military and Selective Service

When you turn 18, you are eligible for military service. The U.S. military offers a great deal of benefits to young individuals entering the adult world. Some of these benefits include travel, job training, health insurance, money for college, a steady income, and retirement packages if you wish to be a career soldier. You can serve on active duty at military bases around the world or part-time in the Reserves or National Guard, close to home while you work or go to college. The military isn't right for everyone, but it might be right for you. If this is a career you wish to pursue, you should contact a local recruitment officer in your area. Check out these websites to find out more about military service:

- Air Force – <http://www.airforce.com>
- Army – <http://www.goarmy.com>
- Marine Corps – <http://www.marines.com>
- Coast Guard – <http://www.uscg.mil>
- National Guard – <http://www.montanaguard.com>

What is Selective Service?

Selective service is the mechanism by which the United States military “drafts” soldiers during a time of war. A registry is kept of all men between the ages of 18 and 25 and when a conscription act is passed by Congress, a lottery is used to pull citizens into involuntary service. Currently, the draft is not in effect, but Selective Service registration is still required.

Male citizens of the United States are required to register for Selective Service within 30 days of their 18th birthday. Failure to do so can result in serious legal repercussions. These penalties include up to 5 years in jail and up to \$250,000 in fines.

However, prosecution is rare. Instead, a more conventional mechanism is used to encourage registration. In order to qualify for federal or Montana student financial aid, you must provide proof of selective service registration. No registration, no financial aid.

Register online at <http://www.sss.gov>.

Voting

What are the requirements for voting?

You must be 18 or older, a U.S. citizen, and a resident of Montana. You also must have lived for at least 30 days in the county you intend to vote in. You also must be registered to vote. MCA §13-1-111.

How do I register to vote?

There are a number of ways to register to vote in Montana. You can register in person at your county

election office or you can register by mail. To register to vote, visit the Montana Secretary of State website (www.sos.mt.gov/Elections) to find the address of your county election office or to complete and print a voter registration card. Fill out and sign the voter registration card and drop it off or mail it to your county election office 30 days before the election. If you miss the deadline, you can **late register and vote** at your county election office up to and including Election Day.

What information do I need to provide when registering to vote in Montana?

You will need to provide your Montana driver's license number when you register to vote. If you do not have a Montana driver's license, you can provide the last 4 digits of your social security number. If you do not have a driver's license or a social security number, you can provide either a current and valid photo ID (example: tribal ID, school district ID), a current utility bill, bank statement, paycheck, or other government document that shows your name and current address.

Can I vote if I have not registered before Election Day?

Yes. The deadline for regular registration is 30 days before any election. If you miss that deadline, you can still register and vote in the election by late-registering at your county election office. Late registration is available at any time right up through the close of polls on Election Day.

Where do I vote?

You can visit My Voter Page at <https://app.mt.gov/voterinfo/> to find out if you are registered to vote, where you are registered to vote, and the location or directions

to your polling location. You can also contact your county elections administrator to find out where you vote.

I am heading off to college; can I register to vote in the county where I am going to school?

Yes. You can update your address with the election office in the county where you go to school, if you meet the 30-day residency requirement. However, you cannot vote in two places – your parents' house and at school. Choose the location you consider your residence. If you will be in another county or state for school, you can apply for an absentee ballot.

Can I vote absentee? If yes, how do I sign up?

Yes. Montana has no-excuse absentee voting, meaning that you can request and receive an absentee ballot, even if you are not going to be absent from your place of residence on Election Day. If you want to vote by absentee ballot, fill out an Application for Absentee Ballot at sos.mt.gov (or sign up to be on the Annual Absentee List) and return it to your county election office. You can also sign up for the Annual Absentee List by checking the appropriate box when filling out a voter registration card.

Jury Service

The only contact most citizens will ever have with the court system is through jury service. The right to a trial by jury is one of our most important rights and is guaranteed by the United States and Montana Constitutions. By serving as a juror, citizens are helping to preserve this freedom.

If you are required to serve on a jury, you may be asked to make decisions that affect others' civil or property rights, or you may be asked to determine someone's right to freedom or even to life itself. Jurors' contributions are invaluable to the court and to our democratic tradition. Jurors are selected for municipal court, justice court, district court, and federal court.

Jury lists are prepared using the lists of registered voters and licensed drivers. Citizens' names are randomly selected and jury summons are issued for those whose names are drawn.

To be eligible to serve as a juror in Montana, a person must be a citizen of the state and a resident of the county, and be 18 years of age or older. They must be mentally and physically competent, be able to understand English, and not have been convicted of a felony or high crime, the sentence of which has not yet expired or the fine unpaid.

If you receive a summons to appear for a trial as a juror, you will have to appear on the day and time listed, and participate in the questioning and selection process so that a fair and unbiased jury can be selected. Although some trials may extend for a week or more, most trials only last for two to three days.

Although employers are not required to pay employees while on jury duty, state law prevents an employer from firing or demoting any employee because of the employee's service as a juror.

Court Summons

A summons is the official document coming from the court informing the recipient that a lawsuit has been filed and they have been named as the respondent, the person who is being sued. Service of summons is essential for the court to acquire jurisdiction over the respondent. Failure to serve summons will lead to a dismissal. If improperly served, any judgment arising from the case cannot bind the respondent. This is usually the situation in cases where there are multiple respondents; those not properly served with summons cannot be held liable for the awards in the decision.

The general rule is that the summons must be served personally to the respondent. This means that the document must be handed to the respondent himself. The rule is not absolute however, and there are some exceptions. In special cases, where the respondent cannot be located or is in hiding, summons may be served by leaving a copy at his residence. Aside from absence of the respondent, it must also be shown that the sheriff performed reasonable effort to serve the summons personally. In case the respondent is out of reach or is abroad, service of summons can be made through publication in a newspaper of general circulation.

On the other hand, when a summons is correctly served, the recipient has no choice but to answer. The respondent is usually given 20 days to file a response, depending on the specific rule of each state. The period is counted from

the day the respondent received the summons. If the last day of the period of filing a response falls on a weekend or a holiday, the respondent can still file the response on the following day.

The response will either directly contest the allegations in the case or deny the fact that the summons was properly served. Either way, the response must be made or else the respondent will be declared in default. A default order means that the respondent can no longer participate in the trial. His/her failure to file a response is a waiver of his right to contradict the allegations of the plaintiff. The respondent is then prohibited from presenting evidence and yet will be bound by the outcome. This is the worst scenario that can happen to the respondent because they cannot even defend themselves. The court will decide the case based solely on the evidence presented by the plaintiff.

IT IS IMPORTANT to file a response within the time period, so carefully read the summons. The document will usually indicate the date of receipt and the last day for filing a response. As a matter of practicality, it is always better to file an answer as soon as possible.

However, if you are not sure of the contents of the summons, you should contact a lawyer. A lawyer will advise you on what is the best step to take after receiving a summons. A lawyer will not only tell you the deadline for filing but can also help you draft the content of your response.

A summons is the official document coming from the court informing the recipient that a lawsuit has been filed and they have been named as the respondent, the person who is being sued. Service of summons is essential for the court to acquire jurisdiction over the respondent.



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