

VOLUME NO. 41

OPINION NO. 87

CRIMINAL LAW AND PROCEDURE - Charging minors who violate traffic laws;
MOTOR VEHICLES - Charging minors who violate traffic laws;
PEACE OFFICERS - Charging minors who violate traffic laws;
POLICE - Charging minors who violate traffic laws;
TRAFFIC - Charging minors who violate traffic laws;
MONTANA CODE ANNOTATED - Sections 46-11-401(1), 61-8-401(1)(a), 61-12-601, 61-12-602.

HELD: An officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with unlawful operation of a motor vehicle, a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should also describe the underlying traffic offense and cite the

statute which sets forth the underlying offense.

16 October 1986

Richard L. Burns
Deputy City Attorney
City of Glendive
300 South Merrill
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Dear Mr. Burns:

You have requested my opinion on the manner in which police officers should charge minors who violate traffic laws in light of the recent Montana Supreme Court decision in State v. Gee, 43 St. Rptr. 1452 (1986). Prior to Gee, no distinction was made between vehicular offense charges brought against minors and those brought against adult drivers. However, in Gee, the Court held that a minor who commits a vehicular offense is guilty of unlawful operation of a motor vehicle under section 61-12-601, MCA, not the underlying offense. 43 St. Rptr. at 1455.

Pursuant to section 61-12-602, MCA, a peace officer may deliver a form of summons describing the nature of the offense to any child under the age of 18 years who unlawfully operates a motor vehicle in the presence of the officer. Additionally, section 46-11-401(1), MCA, provides in part that a charge shall:

(c) charge the commission of an offense by:

(i) stating the name of the offense;

(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;

(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(iv) stating the time and place of the offense as definitely as can be done; and

(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

Because the Montana Supreme Court held a minor can only be convicted of a vehicular offense under section 61-12-601, MCA, I conclude that an officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should state that the minor unlawfully operated a motor vehicle by committing a specified offense. The officer should also cite the statute which sets forth the underlying offense. For example, if an officer stops a minor for driving under the influence of alcohol, he should charge the minor with violating section 61-12-601, MCA. In the body of the ticket, the officer should then state the facts of the offense as "unlawfully operated a motor vehicle by driving under the influence of alcohol. § 61-8-401(1)(a), MCA." This method of ticketing recognizes that a minor can only be found guilty of unlawful operation of a motor vehicle, while also giving notice of the underlying offense which must be proven to convict the minor.

THEREFORE, IT IS MY OPINION:

An officer who sees a minor commit a traffic offense should issue the minor a ticket charging him with unlawful operation of a motor vehicle, a violation of section 61-12-601, MCA. In stating the facts of the offense, the officer should also describe the underlying traffic offense and cite the statute which sets forth the underlying offense.

Very truly yours,

MIKE GREELY
Attorney General