

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 3

COURTS, CITY - Jurisdiction over traffic offenses involving use of bicycles;
COURTS, JUSTICE - Jurisdiction over traffic offenses involving use of bicycles;
JUVENILES - Traffic offenses involving use of bicycles;
TRAFFIC - Offenses involving use of bicycles;
MONTANA CODE ANNOTATED - Sections 3-6-103, 3-10-303(1), 3-11-102(1), 41-5-203(1), 61-1-123, 61-8-601(1), 61-8-711, 61-12-601, 61-12-602;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 87 (1986).

HELD: Section 61-12-601, MCA, does not apply to traffic offenses involving use of a bicycle, as defined in section 61-1-123, MCA, by a person under the age of 18 years.

27 January 1987

David N. Hull
Assistant City Attorney
City of Helena
City-County Administration Building
316 North Park
Helena MT 59623

Dear Mr. Hull:

You have requested my opinion concerning the following question:

Whether section 61-12-601, MCA, applies to traffic offenses committed by a person under the age of 18 during the course of operating a bicycle as defined in section 61-1-123, MCA.

Because section 61-12-601, MCA, is concerned only with unlawful operation of a motor vehicle and is not otherwise extended to alleged traffic violations involving use of a bicycle, I conclude that it has no application.

The term "motor vehicle" is defined broadly in section 61-1-102, MCA, to include, inter alia, "every vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state" but expressly excludes bicycles as defined in section 61-1-123, MCA. The latter section defines a bicycle as follows:

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(1) [E]very vehicle propelled solely by human power upon which any person may ride, having two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(2) every vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

The use of bicycles, however, is generally subject to the same provisions of Title 61, chapters 7, 8, and 9, as motor vehicles. § 61-8-602, MCA. Violation of such provisions is a misdemeanor and subject to those penalties stated under section 61-8-711, MCA. See § 61-8-601(1), MCA.

Section 61-12-601, MCA, establishes the offense of unlawful operation of a motor vehicle by a person under the age of 18 and provides for concurrent jurisdiction over such offense among district, justice, municipal, and city courts. See State v. Gee, 43 St. Rptr. 1452, 723 P.2d 934 (1986); 41 Op. Att'y Gen. No. 87 (1986). By its explicit provisions, therefore, that section does not extend to offenses involving the unlawful operation of a bicycle and is not otherwise made applicable to such conduct by another provision. A youth alleged to have violated a traffic regulation in Title 61, chapters 7, 8, or 9, should consequently be charged in justice, municipal, or city court with violation of the particular statute involved and not charged under section 61-12-601, MCA. See §§ 3-6-103, 3-10-303(1), 3-11-102(1), MCA; see also § 41-5-203(1), MCA; State ex rel. Maier v. City Court, 39 St. Rptr. 1560, 662 P.2d 276 (1982), on reh'g, 40 St. Rptr. 560, 662 P.2d 279 (1983).

THEREFORE, IT IS MY OPINION:

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Section 61-12-601, MCA, does not apply to traffic offenses involving use of a bicycle, as defined in section 61-1-123, MCA, by a person under the age of 18 years.

Very truly yours,

MIKE GREELY
Attorney General