

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 34

COURTS, CITY - Jurisdiction of third offense DUIs;  
COURTS, DISTRICT - Jurisdiction of third offense DUIs;  
COURTS, JUSTICE - Jurisdiction of third offense DUIs;  
CRIMINAL LAW AND PROCEDURE - City court's jurisdiction  
of third offense DUIs;  
MOTOR VEHICLES - City court's jurisdiction of third  
offense DUIs;  
MONTANA CODE ANNOTATED - Title 61; sections 3-10-303,  
3-10-303(1), 3-11-102, 3-11-102(1), 3-11-103,  
3-11-103(1), 45-2-101(36), 61-8-714(3);  
MONTANA LAWS OF 1987 - Chapter 543;  
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No.  
12 (1987).

HELD: Section 3-11-102(1), MCA, as amended by 1987  
Montana Laws, chapter 543, enables third  
offense DUIs to be prosecuted in city court as  
a violation of state law. If the offense has  
been adopted as a city ordinance, it may be  
prosecuted in city court as a violation of the  
city ordinance.

5 November 1987

Bruce E. Becker  
Bozeman City Attorney  
P.O. Box 640  
Bozeman MT 59771-0640

Dear Mr. Becker:

You have requested my opinion on the following question:

Whether a city court has jurisdiction over  
third offense DUIs without the necessity of  
adopting an ordinance under section  
61-8-401(6), MCA.

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This question requires analysis of the statutes governing jurisdiction of city, justice, and district courts, as well as the pertinent DUI statute in Title 61, MCA.

Criminal penalties for third offense DUIs are addressed in section 61-8-714(3), MCA:

On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

A third or subsequent DUI offense is a misdemeanor, with a minimum penalty of \$500 and/or 30 days' imprisonment. See § 45-2-101(36), MCA ("Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less").

The city court's jurisdiction is set forth in sections 3-11-102 and 3-11-103, MCA. Under section 3-11-103(1), MCA, the city court has exclusive jurisdiction of proceedings for violation of a city ordinance. Under section 3-11-102(1), MCA, the city court has concurrent jurisdiction with the justice court of all misdemeanors provided for in Title 3, chapter 10, part 3, MCA. This section was amended by the 1987 Legislature, 1987 Mont. Laws, ch. 543, to expand the city court's concurrent jurisdiction. Prior to the amendment, the city court's concurrent jurisdiction was limited to misdemeanors punishable by a fine not exceeding \$500 and/or imprisonment not exceeding six months; thus, it had no jurisdiction of third offense DUIs charged under state law.

The city court's present jurisdiction of third offense DUIs charged under state law is obtained in a somewhat circuitous manner. As previously mentioned, the city court has concurrent jurisdiction with justice court of all misdemeanors provided for in Title 3, chapter 10,

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part 3, MCA. Section 3-10-303(1), MCA, gives justice courts jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 and/or imprisonment not exceeding six months, and section 3-10-301(2), MCA, gives justice courts concurrent jurisdiction with the district courts of misdemeanors punishable by sentences exceeding \$500 and/or six months. Thus, by operation of section 3-11-102(1), MCA, city courts and justice courts have concurrent jurisdiction of all misdemeanors, including third offense DUIs.

Prior to the 1987 legislative amendments, the city court had jurisdiction of a third offense DUI only if that offense was adopted as a city ordinance and prosecuted as such by the city attorney. § 61-8-401(6), MCA; 42 Op. Att'y Gen. No. 12 (1987). The 1987 amendment to section 3-11-102(1), MCA, enables the city to prosecute third offense DUIs in city court as violations of state law as well.

THEREFORE, IT IS MY OPINION:

Section 3-11-102(1), MCA, as amended by 1987 Montana Laws, chapter 543, enables third offense DUIs to be prosecuted in city court as a violation of state law. If the offense has been adopted as a city ordinance, it may be prosecuted in city court as a violation of the city ordinance.

Very truly yours,

MIKE GREELY  
Attorney General