



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS

June 26, 2020

The Honorable Mike Wilson  
Panola County Justice Court Judge  
111 East Hospital Street  
Sardis, Mississippi 38666

Re: DUI Offenses

Dear Judge Wilson:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

### **Question Presented**

Does Miss. Code Ann. Section 63-11-30(8)(b) require certification by law enforcement for first DUI offenses in addition to second and subsequent DUI offenses?

Must boxes (a), (b), and (c) on the Uniform Traffic Ticket for Driving Under the Influence be marked by law enforcement collectively or singularly alleging the offense of impairment?

### **Brief Response**

There is no requirement in Section 63-11-30 that a law enforcement officer submit a certification on a first time DUI. Section 63-11-30(8)(b) requires a law enforcement officer to submit a certification on second or subsequent DUI offenses prior to the judge accepting a guilty plea.

Pursuant to Miss. Code Ann. Section 7-5-25, this office may not make any factual determinations in the issuance of an official opinion. Which box is appropriate to mark is a factual determination, driven by the specific circumstances surrounding the issuance of the Uniform Traffic Ticket. We cannot, therefore, issue an official opinion in answer to your second question.

### Applicable Law and Discussion

Miss. Code Ann. Section 63-11-30(8) states as follows:

**(8) Charging of subsequent offenses.** (a) For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years for a second or third offense, or without a time limitation for a fourth or subsequent offense, under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(b) Before a defendant enters a plea of guilty to an offense under this section, law enforcement must submit certification to the prosecutor that the defendant's driving record, the confidential registry and National Crime Information Center record have been searched for all prior convictions, nonadjudications, pretrial diversions and arrests for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other substance that has impaired the person's ability to operate a motor vehicle. The results of the search must be included in the certification.

(Emphasis added). Section 63-11-30 does not require a law enforcement officer to submit a certification for a first-time DUI.<sup>1</sup> The certification required by Section 63-11-30(8)(b) serves to make the judge aware of all previous convictions as well as non-adjudications and pretrial diversions prior to entering a guilty plea and sentencing.

While this office cannot issue an official opinion in answer to your second question, we refer you to the following cases for future guidance: *Ross v. State*, 275 So. 3d 1090 (Miss. 2019); *Pryor v. State*, 265 So. 3d 1233 (Miss. Ct. App. 2018); *Koch v. State*, 222 So. 3d 1088 (Miss. Ct. App. 2017); *Campbell v. State*, 164 So. 3d 519 (Miss. Ct. App. 2015); *Kramm v. State*, 949 So. 2d 18 (Miss. 2007); *Wright v. City of Water Valley*, 832 So. 2d 1241 (Miss. 2002); *Lewis v. State*, 831 So. 2d 553 (Miss. 2002); *Young v. City of Brookhaven*, 693 So. 2d 1355 (Miss. 1997).

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<sup>1</sup> We note that, if a defendant is seeking the non-adjudication of a “true” first (1<sup>st</sup>) time DUI offense, Sections 63-11-30(2)(a)(iii) and 63-11-30(14) may require the confidential registry of the Department of Public Safety to be checked as well as the person’s driver’s license history and/or NCIC record to ensure the defendant qualifies for non-adjudication of the 1<sup>st</sup> time DUI offense, meaning the defendant has “not previously been convicted of and does not have pending any former or subsequent charges. . .”.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim P. Turner*

Kim P. Turner  
Assistant Attorney General

OFFICIAL OPINION