



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 23, 2020
TO Joint Judiciary Committee
FROM David Hopkinson, Staff Attorney
SUBJECT Topic Summary: Driving Under the Influence

This summary provides a brief overview of existing Wyoming Driving Under the Influence law.

Approved Interim Topic

Priority No. 5: Driving Under the Influence (DUI) Statutory Review.

The Committee will undertake a comprehensive review of the DUI statutes.

Driving Under the Influence law in Wyoming: An Overview

Wyoming has three primary criminal statutes for driving under the influence:¹ (1) Driving or having control of a vehicle while under the influence of intoxicating liquor or controlled substances²; (2) Unlawful operation of a vehicle by a youthful driver with detectable alcohol concentration³; and (3) Operation of a watercraft by an intoxicated or drugged person prohibited⁴.

Driving Under the Influence

¹ There are other statutes relating to conduct while driving under the influence such as W.S. 6-2-106 Homicide by vehicle. This topic summary is focused more specifically on driving under the influence itself. An expanded summary could be provided should the Committee desire.

² W.S. 31-5-233.

³ W.S. 31-5-234.

⁴ W.S. 41-13-206.

To be guilty of Driving Under the Influence an individual must drive or have actual physical control of a vehicle while (1) having an alcohol concentration of 0.08% or more; (2) having an alcohol concentration of 0.08% within 2 hours of driving or being in actual physical control of a vehicle; or (3) to an extent which renders him incapable of safely driving⁵ an individual is (A) under the influence of alcohol, (B) is under the influence of a controlled substance, or (C) is under the influence of a combination of alcohol and a controlled substance.⁶

Criminal Penalties

A conviction for DUI carries a maximum penalty of 6 months in jail, a \$750 fine, or both for a first offense. A second offense within 10 years has the same penalty as a first offense, except for a mandatory minimum 7 days in jail and a mandatory minimum \$200 fine. A third offense within 10 years carries the same maximum jail sentence as a first offense and second offense but imposes a mandatory minimum 30 days in jail and a minimum fine of \$750 up to a maximum of \$3,000. For that third offense, up to 15 days of the 30-day minimum jail sentence may be suspended if, after committing the offense, the individual completes an inpatient treatment program approved by the Court. Any term of misdemeanor probation can be extended beyond the maximum term of imprisonment to a maximum of 3 years⁷. Finally, a fourth or subsequent offense within 10 years is punishable by up to 7 years in prison, a \$10,000 fine, or both.⁸ The Wyoming Supreme Court has interpreted the lookback date for a second and third offense to be the date of conviction, and on a fourth or subsequent offense the lookback date is the date of the offense.⁹

If the offender was over 18 years of age and a child passenger¹⁰ was in the vehicle at the time of the DUI, the penalty for a first offense is increased to a maximum of 1 year in

⁵This language was challenged as being unconstitutionally vague in Guilford v. State, 2015 WY 147, ¶ 20, 362 P.3d 1015. The Wyoming Supreme Court held the defendant had failed to meet his burden to show it was unconstitutionally vague as applied to his case. Id.

⁶ W.S. 31-5-233(b)(i) through (iii).

⁷ W.S. 31-5-233(e).

⁸ W.S. 31-5-233(e).

⁹ See Rhoads v. State, 2018 WY 143, ¶ 18, 431 P.3d 1130, 1135 (Wyo. 2018).

¹⁰ W.S. 31-5-233(a)(vi) "'Child passenger' means a person traveling in a vehicle who is under sixteen (16) years of age;".

jail.¹¹ If the offender was previously convicted of DUI with a child passenger in the vehicle the penalty is increased to a maximum of 5 years in prison.¹²

If the offender caused serious bodily injury¹³ as a result of his DUI violation, the penalty is increased for a first offense to a maximum of 10 years in prison and a minimum fine of \$2,000 to a maximum fine of \$5,000, or both.¹⁴ If the offender has a previous conviction for causing serious bodily injury under this or a similar statute the maximum penalty is increased to 20 years imprisonment.¹⁵

Implied Consent

Per Wyoming Statute, any person who drives or is in actual physical control of a motor vehicle is deemed to have given consent, subject to certain provisions, to chemical tests of his blood, breath, or urine to determine his BAC.¹⁶ Upon a lawful arrest for DUI, law enforcement may request an individual perform a chemical test of their blood, breath, or urine. The individual may refuse, in which case none is given unless there is serious bodily injury, or a warrant is obtained.¹⁷ For those with a Commercial License, refusing to submit to the requested test will disqualify them for at least one year.^{18,19} The officer

¹¹ W.S. 31-5-233(m)(i).

¹² W.S. 31-5-233(m)(ii).

¹³ W.S. 6-1-104(a)(x) ""Serious bodily injury" means bodily injury which:

(A) Creates a substantial risk of death;

(B) Causes severe protracted physical pain;

(C) Causes severe disfigurement or protracted loss or impairment of a bodily function;

(D) Causes unconsciousness or a concussion resulting in protracted loss or impairment of the function of a bodily member, organ or mental faculty;

(E) Causes burns of the second or third degree over a significant portion of the body; or

(F) Causes a significant fracture or break of a bone.".

¹⁴ W.S. 31-5-233(h)(i).

¹⁵ W.S. 31-5-233(h)(ii).

¹⁶ W.S. 31-6-102(a).

¹⁷ W.S. 31-6-102(d). If an individual continues to refuse after a warrant is obtained that may be the basis for an interference with a peace officer charge. See Garza v. State, (2020 WY 32).

¹⁸ W.S. 31-7-305(a)(v).

¹⁹ In 2011 the implied consent law was amended, removing the possibility of a license suspension, except for Commercial Licenses, for refusing to submit to a chemical test,

advises the person that if the test results indicate the person is under the influence of alcohol or a controlled substance: (1) he may be subject to criminal penalties; (2) his Wyoming driver's license shall be suspended for 90 days, (3) he may be required to drive only vehicles equipped with an ignition interlock device.²⁰ The officer also advises the individual that following his submission to a chemical test he may at his own expense obtain another test at the nearest hospital or clinic.²¹

If the chemical test indicates a BAC of 0.08% or more the officer submits a signed statement to the Department of Transportation that contains his probable cause to believe the person was driving or in actual physical control of a vehicle while under the influence, that a test was taken, and that the results were 0.08% or more.²² He provides the individual with a temporary license that's valid for 30 days and seizes their original license. The individual has 20 days to demand an administrative hearing, or their license is suspended for 90 days.

Upon receipt of a demand for a hearing the Department forwards the demand to an independent hearing examiner who holds a hearing within 45 days. The only issues determined at the hearing are whether the officer had probable cause to arrest for DUI, whether there was an arrest, whether any test result indicated a BAC of 0.08% or higher, and whether the individual was properly advised pursuant to W.S. 31-6-101(a)(ii) (described above).²³ The hearing examiner either sustains the suspension or rescinds it.

Driver's Licenses and Insurance

An individual convicted of DUI will have their license suspended for 90 days on a first conviction²⁴ and one year for a second conviction within 10 years.²⁵ For a third or subsequent conviction within 10 years their license will be revoked for three years.²⁶ They are also required to file and maintain proof of financial responsibility for three

but making the process for obtaining a warrant easier. See 2011 Wyo. Session Law Ch. 178.

²⁰ W.S. 31-6-102(a)(ii)(B).

²¹ W.S. 31-6-102(a)(ii)(C).

²² W.S. 31-6-102(e).

²³ W.S. 31-6-103.

²⁴ W.S. 31-7-128(b)(i).

²⁵ W.S. 31-7-128(b)(ii).

²⁶ W.S. 31-7-127(a)(ii) and (b).

years²⁷ beginning on the date of the revocation pursuant to W.S. 31-9-401 *et seq.*, though proof is not required if they surrender their license and vehicle registration.²⁸

An operator of a commercial vehicle is prohibited from driving with any alcohol in their system.²⁹ If they are found to have a detectable amount of alcohol they are placed out of service for 24 hours.³⁰ An individual with a Commercial Drivers License will be disqualified from driving a commercial vehicle for not less than one year for a first offense if he drives or is in actual physical control of a vehicle while under the influence to a degree which renders him incapable of safely driving, has a BAC of 0.08% or higher, refuses to submit to a test to determine his BAC while driving, or while operating a commercial vehicle he has a BAC of 0.04% or more.³¹ If the individual was transporting specified hazardous material at the time of the offense he shall be disqualified for at least 3 years.³² On a second conviction for these offenses (or several other enumerated offenses unrelated to DUI) he may be disqualified for life.³³ Prior to being disqualified for the above reasons the person is entitled to an administrative hearing.³⁴

Ignition Interlock Device

An individual convicted of a first offense DUI, or whose prosecution is deferred under W.S. 7-13-301, where the Department of Transportation's administrative action indicates a BAC over 0.15%³⁵, shall be required to install an ignition interlock device in their vehicle for six months.³⁶ For a second conviction the device must remain installed for one year.³⁷ For a third conviction two years is required.³⁸ For a fourth or subsequent conviction, a device is required for the remainder of that person's life except that five years following the conviction, and every five years thereafter, the individual may apply

²⁷ W.S. 31-7-127(c); W.S. 31-7-128(c).

²⁸ W.S. 31-9-413(a)(2).

²⁹ W.S. 31-7-306.

³⁰ W.S. 31-7-309(b).

³¹ W.S. 31-7-305(a).

³² W.S. 31-7-305(b).

³³ W.S. 31-7-305(c).

³⁴ W.S. 31-7-305(k).

³⁵ This only applies if the individual was given notice and had an opportunity to pursue administrative remedies under W.S. 31-7-105.

³⁶ W.S. 31-5-233(f)(ii).

³⁷ W.S. 31-5-233(f)(iii).

³⁸ W.S. 31-5-233(f)(iv).

to the court to lift the restriction for good cause shown, provided there are no subsequent convictions for DUI.³⁹

The Court may require a person to participate in a 24/7 sobriety program established pursuant to W.S. 7-13-1701 *et seq.* as an alternative, or in addition to the above interlock requirements.⁴⁰ The term required shall be the same as the listed term for the ignition interlock device⁴¹ and the individual shall be issued a restricted license pursuant to W.S. 31-7-109(m).⁴² The 24/7 sobriety program was enacted into law in 2014⁴³ and amended in 2019.⁴⁴ It provides frequent testing and quick enforcement for enrolled individuals. Those who are charged or convicted of crimes committed while intoxicated or under the influence of controlled substances may be ordered by the court to participate as part of pretrial release, bond, suspension of sentence, probation, or other conditional release.⁴⁵ The program is administered by the attorney general,⁴⁶ with each county participating through its sheriff.⁴⁷ Currently five counties have implemented the program.⁴⁸

Vehicle Registration

An individual convicted of DUI who was driving a vehicle registered to them in Wyoming that has a prior DUI conviction within 2 years of the offense shall have their registration for that vehicle suspended for the same time period as their license revocation or suspension, and the county treasurer shall not issue any new vehicle registrations to the convicted individual during the period of suspension.⁴⁹

³⁹ W.S. 31-5-233(f)(v).

⁴⁰ W.S. 31-5-233(n).

⁴¹ Id.

⁴² The 24/7 restricted license is granted to eligible participants of the 24/7 program who would otherwise be restricted with an ignition interlock device. If they leave the program and would otherwise be restricted by an ignition interlock device, they are required to obtain an ignition interlock restricted license and follow the requirements established for that license.

⁴³ 2014 Wyo. Session Laws Ch. 47.

⁴⁴ 2019 Wyo. Session Laws Ch. 49.

⁴⁵ W.S. 7-13-1308(a).

⁴⁶ W.S. 7-13-1303.

⁴⁷ W.S. 7-13-1704.

⁴⁸ According to the Wyoming Governors Council on Impaired Driving website, those counties include Sweetwater, Natrona, Fremont, Campbell, and Sheridan. <http://www.wygid.org/24-7-sobriety-project.html>.

⁴⁹ W.S. 31-7-128(c).

Treatment

An individual convicted of DUI is ordered or may be required to obtain a substance abuse evaluation by a provider certified by the Department of Health either at or before sentencing.⁵⁰ Completion of any recommended treatment is a common term of probation.

Other Provisions

When imposing a jail sentence for a DUI conviction, the court may provide that an individual may be permitted to continue employment or school and be released from jail during the actual hours of employment or school, returning to the jail during all other hours.⁵¹

Any person charged for DUI or a similar municipal ordinance shall not have the charge reduced or dismissed unless the prosecuting attorney in open court moves or files a written statement to dismiss, with supporting facts, stating that there is insufficient evidence to sustain the charge.⁵²

An individual with a BAC of 0.05% or less is presumed not to be under the influence of alcohol.⁵³ If the individual had a BAC between 0.05% and 0.08% there is no presumption, but it may be considered along with other evidence whether the individual was incapable of safely driving.⁵⁴ This shall not be construed to limit the introduction of other competent evidence.⁵⁵ Additionally, a prescription for a controlled substance is not a defense to a claim of being incapable of safely driving a vehicle.⁵⁶

Chemical testing of an individual's blood, breath, or urine is to be performed pursuant to W.S. 31-6-105(a),⁵⁷ which requires it to be performed pursuant to methods approved by the Department of Health and by an individual possessing a valid permit issued by the Department to conduct the analysis.⁵⁸ An individual required to submit to a chemical test under this section may have another test performed by a qualified individual of his

⁵⁰ W.S. 31-5-233(e).

⁵¹ W.S. 31-5-233(g).

⁵² W.S. 31-5-233(j).

⁵³ W.S. 31-5-233(c).

⁵⁴ Id.

⁵⁵ W.S. 31-5-233(d).

⁵⁶ Id.

⁵⁷ W.S. 31-5-233(k).

⁵⁸ W.S. 31-6-105(a).

choosing and at his own expense.⁵⁹ Failure or inability to obtain a second test does not preclude the admissibility into evidence of the test requested and obtained by the peace officer.⁶⁰

Unlawful Operation of a Motor Vehicle by a Youthful Driver

A person 21 years of age or younger shall not operate or be in actual physical control of a motor vehicle in Wyoming with a BAC of 0.02% or greater, either at the time of operation or control or as measured within 2 hours of that time.⁶¹

Criminal Penalties

An individual convicted of violating this section faces a maximum fine of \$750 for a first offense.⁶² For a second offense within one year of the first conviction the penalty increases to a maximum of one month in jail, a fine of \$750 or both.⁶³ For a third or subsequent offense within 2 years the maximum penalty increases to 6 months in jail with the same maximum fine.⁶⁴ Any term of probation may exceed the maximum potential jail sentence but shall not exceed 3 years.⁶⁵

Implied Consent

The implied consent law for youthful offenders is substantially similar to the implied consent law for a regular DUI. It differs in allowing an offender to demonstrate good cause to the hearing examiner that his license should not be suspended or denied regardless of having a BAC 0.02% or higher.⁶⁶ Records kept by the Department under this section are also more restricted and cannot be the basis for an increase in insurance rates for a minor.⁶⁷

⁵⁹ W.S. 31-6-105(d).

⁶⁰ Id.

⁶¹ W.S. 31-5-234(b).

⁶² W.S. 31-5-234(e).

⁶³ Id.

⁶⁴ While it does not appear the Wyoming Supreme Court has directly addressed the lookback period in this statute, based on the similarities between the language here and in W.S. 31-5-233 (DUI statute) the court might find the lookback period for a second offense to be the date of conviction, and for a third or subsequent offense to be the date of the offense.

⁶⁵ Id.

⁶⁶ W.S. 31-6-108(h)(iv).

⁶⁷ W.S. 31-6-108(o).

Driver's Licenses and insurance

A person under 21 convicted under this section shall have his license suspended or denied (in the event no license had ever been issued) for 90 days for a first offense or six months if they have a previous conviction under this section or for DUI within the last two years.⁶⁸ If they don't have a license one shall not be issued until after the suspension period.⁶⁹ They do not have to file and maintain proof of financial responsibility if the only basis for the denial or suspension is a violation of this section; otherwise, the person must maintain proof of financial responsibility for three years from the date of the suspension.⁷⁰

Ignition Interlock Device

The Ignition Interlock Device requirements under this section are substantially similar to those required for a regular DUI. The primary difference is a conviction under this section does not contain the provisions for a 24/7 program instead of or in addition to an interlock device that the regular DUI section does.⁷¹

Treatment

The Court may order an individual convicted under this section to obtain a substance abuse evaluation and complete any recommended treatment as a condition of probation.⁷²

Other Provisions

The Court may upon pronouncement of a jail sentence provide that an individual convicted under this section may be permitted to continue employment or school and be released from jail during the actual hours of employment or school and returning to the jail during all other hours.⁷³

Chemical testing of an individual's blood, breath, or urine and related provisions are substantially the same as that for a regular DUI (see the discussion above).⁷⁴

⁶⁸ W.S. 31-7-128(h)(i).

⁶⁹ W.S. 31-7-128(h)(ii).

⁷⁰ W.S. 31-7-128(e) and (j).

⁷¹ W.S. 31-5-234(f).

⁷² W.S. 31-5-234(e).

⁷³ W.S. 31-5-234(g).

⁷⁴ W.S. 31-5-234(h).

Operation of Watercraft by an Intoxicated Person

No person shall operate or be in actual physical control of a watercraft⁷⁵ if the person, to a degree which renders him incapable of safely operating a watercraft, is (1) under the influence of alcohol, (2) is under the influence of a controlled substance, or (3) is under the influence of a combination of the two. No person shall operate or be in actual physical control of a watercraft if the person has a BAC of 0.08% or more if the watercraft is a motorboat.

Criminal penalties

Any person convicted of operating a watercraft under the influence may be punished by a maximum sentence of 6 months in jail, a fine of \$750 or both.⁷⁶ They may also be refused the privilege of operating a watercraft on any of the waterways of Wyoming for not more than 2 years.⁷⁷

Other provisions

Similar to the DUI statute this statute provides for a presumption of not being under the influence if the BAC is 0.05% or below.⁷⁸ The watercraft DUI statute also provides that a prescription is not a defense to being under the influence of a controlled substance.⁷⁹

Unique to the watercraft DUI statute is a provision that consuming alcohol after operating the watercraft but before being tested is an affirmative defense to the allegation of having a BAC of 0.08% or higher if the watercraft is a motorboat, but evidence of that defense is not admissible unless notice to the prosecution is provided under Rule 12.1 of the Wyoming Rules of Criminal Procedure.⁸⁰

Committee Considerations

Based on information received for this topic request, the Committee may wish to consider the following in its review of this topic:

⁷⁵ W.S. 31-13-101(a)(vii): “Watercraft” means any contrivance used or designed primarily for navigation on water.

⁷⁶ W.S. 41-13-216(a).

⁷⁷ Id.

⁷⁸ W.S. 41-13-206(d); See discussion on page 5.

⁷⁹ W.S. 41-13-206(e).

⁸⁰ Id.

- Requiring a driving course for first offenses;
- Amending/increasing fines for DUI offenses;
- Alignment of the lookback provisions and penalties for dates of offenses or convictions associated with 2nd or subsequent offenses;
- Drugged driving issues and remedies;
- Utilization of the 24/7 license;
- Issues peace officers face in investigating and prosecutors face in prosecuting DUI cases;
- The Driver-license suspension process.

This summary is meant to provide a broad and basic overview of Wyoming DUI law. Please let me know if you have any questions or need further information.