

Driving Under the Influence (DUI) Statutes

Joint Judiciary Committee
Video Conference
May 20, 2020



Driving Under the Influence

Purpose



This topic was requested to review current operational, logistical and practical issues with the implementation of laws related to Driving Under the Influence (DUI).

- Ignition Interlock Devices
- Driver's License Suspension or Revocation – Look Back Period
- Youthful Drivers Conflicts in Statutes – Suspensions
- Restricted Licenses – Controlled Substances Convictions
- Refusal to Submit Biological Evidence – Enforcement

Driving Under the Influence

Ignition Interlock Devices – Requirements



W.S. 31-5-233. Driving or having control of vehicle while under influence of intoxicating liquor or controlled substances; penalties.

(f) Any person convicted under this section or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v) shall, in addition to the penalty imposed:

(iv) Except as provided in subsection (n) of this section, for a third conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for a period of two (2) years;

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Ignition Interlock Devices – Requirements



Issue

Third conviction requires a 3-year revocation as outlined in W.S. 31-7-127(b).

Discussion

- If a person were to remove the ignition interlock device after the two (2) year period, they would no longer be able to drive.
- In order to continue driving, the person must maintain the ignition interlock device and keep the ignition interlock license or have a 24/7 license if so ordered.

Recommendation

Adjust the requirement under W.S. 31-5-233(f)(iv) to a 3-year Ignition Interlock or a 24/7 license to match the revocation period.

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Ignition Interlock Devices – Administration



W.S. 31-5-233. Driving or having control of vehicle while under influence of intoxicating liquor or controlled substances; penalties.

(f) Any person convicted under this section or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v) shall, in addition to the penalty imposed:

(v) For a fourth or subsequent conviction, operate only vehicles equipped with an ignition interlock device, pursuant to W.S. 31-7-401 through 31-7-404, for the remainder of the offender's life, **except five (5) years from the date of conviction and every five (5) years thereafter, the offender may apply to the court for removal of the ignition interlock device required by this paragraph. The court may, for good cause shown,** remove the ignition interlock device requirement if the offender has not been subsequently convicted of driving a motor vehicle in violation of this section or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v).

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Ignition Interlock Devices – Administration



Issue

Upon the 4th or subsequent conviction for DUI, an offender is required to only operate vehicles equipped with an ignition interlock device for life.

Discussion

- Allows driver to petition after 5 years.
- If the initial petition is denied, driver can petition again every 5 years.
- The ***“offender may apply to the court”*** to remove the device.
 - DUI convictions are frequently not limited to a single court.
- Does not define “court,” “good cause” or who would receive notice of the petition.
- WYDOT does not always receive notice of the petition.
 - Receives and maintains records related to the ignition interlock device.

Recommendation

Modify W.S. 31-5-233 authorizing WYDOT to promulgate rules defining a process to administer this requirement.

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Driver License Revocation or Suspension – Look Back Period



W.S. 31-7-127 - Mandatory revocation of license for certain violations.

(a) The division shall revoke the license or nonresident operating privilege of any person, upon receipt of a record of conviction of the person of any of the following violations:

(ii) A conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, if the person has been previously convicted two (2) or more times under W.S. 31-5-233 or other law prohibiting driving while under the influence **within the ten (10) year period preceding**:

- (A) The date of the offense upon which the conviction is based; or
- (B) The date of the conviction at issue.

W.S. 31-7-128: Mandatory suspension of license or nonresident operating privilege for certain violations; suspension of registration.

(b) Upon receiving a record of a driver's conviction under W.S. 31-5-233 or other law prohibiting driving while under the influence, the division shall suspend the license or nonresident operating privilege for:

(ii) One (1) year, if the person has been previously convicted once under W.S. 31-5-233 or other law prohibiting driving while under the influence **within the ten (10) year period** preceding:

- (A) The date of the offense upon which the conviction is based; or
- (B) The date of the conviction at issue.

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Driver License Revocation or Suspension – Look Back Period

W.S. 31-7-105. Administrative hearings.

(f) Upon receipt of a timely request, the department shall conduct a review of its records and issue an order granting or denying limited driving privileges. The discretion to continue or modify any order of suspension or denial to allow driving privileges is limited as follows:

(iii) It may be extended to a person convicted under W.S. 31-5-233 or other law prohibiting driving while under the influence, or a person whose driver's license has been suspended or denied for a violation of W.S. 31-5-234, only if:

(A) *Within the five (5) year period preceding the date of the most recent offense*, the person has not been convicted under W.S. 31-5-233 or other law prohibiting driving while under the influence; and

(B) The person agrees to pursue and completes an alcohol education or treatment program as the department prescribes.

Issue

Many statutes relating to DUI have been updated over time and have a variation in the look back provisions.

Recommendation

Change W.S. 31-7-105(f)(iii)(A) from a 5-year to a 10-year period to be consistent with W.S. 31-7-127 and W.S. 31-7-128 and Federal Motor Carrier Safety Administration regulations.

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Youthful Drivers Conflicts in Statutes - Suspensions



W.S. 31-5-234. Unlawful operation of vehicle by youthful driver with detectable alcohol concentrations.

- (f) A person convicted under this section or other law prohibiting driving while under the influence as defined in W.S. 31-5-233(a)(v) shall, in addition to the penalty imposed in subsection (e) of this section:
- (i) *Have his driver's license denied or suspended pursuant to W.S. 31-7-128(h)*. The court shall forward a copy of the conviction to the department;

W.S. 31-7-128. Mandatory suspension of license or nonresident operating privilege for certain violations; suspension of registration.

- (h) Upon receiving a record of a driver's violation of W.S. 31-5-234, the department shall suspend or deny the license or nonresident driving privileges as follows:
- (i) A person who has been issued a driver's license shall be suspended:
- (A) For a period of ninety (90) days for a first offense;
 - (B) For a period of six (6) months if the person has previously violated W.S. 31-5-234 once, or has previously been convicted once under W.S. 31-5-233 or other law prohibiting driving while under the influence within two (2) years preceding:
 - (I) The date of the offense upon which the conviction is based; or
 - (II) The date of conviction.
 - (C) Repealed By Laws 2002, Ch. 93, § 2.
- (ii) A person who has not been issued a driver's license shall not operate a vehicle and the department shall not issue the person a driver's license or learner's permit for the time specified in paragraph (h)(i) of this section.

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Youthful Drivers Conflicts in Statutes - Suspensions

Issue

There are two places within W.S. 31-7-134 where suspensions for youthful drivers are mentioned that seem to pre-date, or were not adjusted, during the creation of the youthful driver law.

Discussion

W.S. 31-7-134. Driving while license cancelled, suspended or revoked.

(c) A person convicted of a subsequent violation of subsection (a) of this section for driving during the same period of cancellation, suspension or revocation giving rise to the previous conviction, or a person convicted of driving during a period of cancellation, suspension or revocation arising from a previous conviction under W.S. 31-5-229 or 31-5-233, . . . **Notwithstanding any other provision of law, any person under the age of twenty-one (21) years convicted of being in control of a vehicle in this state with an alcohol concentration of between two one-hundredths of one percent (0.02%) and the amount specified in W.S. 31-5-233(b)(i) shall not be punished by imprisonment of at least seven (7) days in jail as otherwise provided under this section, but shall have his license administratively suspended for thirty (30) days.**

(d) Notwithstanding any other provision of law, any person under the age of twenty-one (21) years convicted of being in control of a vehicle in this state with an alcohol concentration of between two one-hundredths of one percent (0.02%) and the amount specified in W.S. 31-5-233(b)(i) shall not be punished by imprisonment of at least seven (7) days in jail as otherwise provided by this section, but shall have his license administratively suspended for thirty (30) days.

Recommendation

Strike the bold language above in W.S. 31-7-134 (c) and (d) to allow W.S. 31-7-128(h) to govern as specified in W.S. 31-5-234(f)(i).

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Restricted Licenses – Controlled Substances Convictions



Issue

Many statutes fail to address drug-related convictions with the same scrutiny as alcohol convictions. Alcohol-related DUI convictions have a more robust process in place.

Discussion

- Ignition Interlock Restricted (IIR) License
- 2019 SEA0022 created the 24/7 restricted license
 - Currently only an alternative to or in addition to IIR (*see* W.S. 31-5-233(n))

Recommendation

- 1) Review statutes to incorporate driving under the influence of controlled substances
 - W.S. 31-7, Article 5 – 24/7 Licenses
- 2) Modify other statutes to include “controlled substance”:
 - W.S. 31-5-234. Unlawful operation of vehicle by youthful driver with detectable alcohol concentration; penalty.

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Wyoming Highway Patrol 2019 Statistics



TROOPERS			
Vehicles stopped		~109,000	
Speeding citations		44,237	
No child restraint citations		650	
No seat belt citations		3,200	
Impaired driver citations		1,304	
Crash investigations		7,700	
Safety education presentations		~400	
DISPATCH		TOTAL FATALITIES	
REDDI	3,370	2014	150 (131 crashes)
		2015	146 (129 crashes)
Safe2Tell tips	1,593	2016	112 (100 crashes)
		2017	123 (105 crashes)
Tow truck rotations	10,061	2018	111 (100 crashes)
		2019	147 (119 crashes)
PORT OF ENTRY and COMMERCIAL CARRIERS			
Commercial vehicles contacted		1,336,152	
Oversize/overweight permits		221,231	

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Refusal to Submit Biological Evidence – Enforcement



W.S. 31-6-102. Test to determine alcoholic or controlled substance content of blood; suspension of license.

(a) If arrested for an offense as defined by W.S. 31-5-233:

(i) Any person who drives or is in actual physical control of a motor vehicle upon a public street or highway in this state *is deemed to have given consent, subject to the provisions of this act, to a chemical test or tests of his blood, breath or urine for the purpose of determining the alcohol concentration or controlled substance content of his blood.* . . .

(d) *If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the agency employing the peace officer as provided in subsection (a) of this section,* none shall be given except in cases where serious bodily injury or death has resulted *or upon issuance of a search warrant.* A test of the agency's choice may be administered upon issuance of a warrant, including a remotely communicated search warrant, when reasonable under the circumstances and as provided in this subsection. A remotely communicated search warrant may be issued upon sworn or affirmed testimony of the peace officer who is not in the physical presence of a judicial officer, provided the judicial officer is satisfied that probable cause exists for the issuance of the warrant. All communication between the judicial officer and the peace officer or prosecuting attorney requesting the warrant may be remotely transmitted by voice, image, text or any combination thereof, or by other means and shall be recorded. The testimony and content of the warrant shall be recorded by writing or mechanical, magnetic, electronic, photographic storage or by other means. Upon approval, the judicial officer may direct a peace officer or the prosecuting attorney requesting a warrant from a remote location to sign the judicial officer's name on a warrant at a remote location. A remotely communicated search warrant shall be valid only for purposes specified in this subsection.

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Refusal to Submit Biological Evidence – Enforcement



Issue

Law enforcement reports an increase in refusals to provide biological evidence (blood/urine), even after a legal valid search warrant has been obtained. Certain jurisdictions in Wyoming do not allow a forced blood draw, hindering prosecution and often resulting in dismissal of the DUI charge. This result appears to be an unintentional oversight in current legislation. Originally, it was believed a signed search warrant would result in obtaining this chemical test evidence.

Discussion

- Use of a physical restraint chair to obtain a blood sample at a medical or detention facility is considered a “forced draw.”
 - Forced blood draws are constitutional when it is performed in a reasonable manner

2019 WHP DUI REFUSAL TO EXECUTE SEARCH WARRANT			
WHP Division	Refusals	Repeat Offenders	No DUI Conviction
B	12	5	2
F	2	1	1
D ¹	1	1	

¹Violator later pled guilty.

- Situations that prevent obtaining legal blood samples:
 - A violator is combative
 - The prosecutor of jurisdiction does not support forced draws
 - The sheriff of jurisdiction does not support forced draws
 - The judge of jurisdiction does not support forced draws
 - Medical personnel do not support forced draws

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Refusal to Submit Biological Evidence – Enforcement



Recommendation

Modify W.S. 31-6-102 to include penalties for refusal to submit to biological evidence upon issuance of a valid search warrant. The committee could consider:

- 1st Offense - \$750 fine
 - Contempt of Court (failure to adhere to search warrant)
 - 90-day driver license suspension

- 2nd Offense - \$1,500 fine
 - Contempt of Court
 - 180-day driver license suspension

- 3rd & subsequent offenses - \$3,000 fine
 - Contempt of Court
 - 1-year driver license suspension



Question and Answer