

SUMMARY OF WYOMING'S IMPAIRED DRIVING STATUTES AS OF JULY 1, 2015

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BRIEF HISTORY OF WYOMING'S *DRIVING UNDER THE INFLUENCE (DUI) LAWS*

*The following information is current as of
July 1, 2015 through June 30, 2016*

The 2015 Wyoming Legislature made a significant change to Wyoming's statutory post conviction relief that "may" allow a person that has previously been convicted of a *driving under the influence* (DUI) charge in Wyoming to have that DUI charge expunged after five (5) years; if the person otherwise meets the statutory requirements of Wyoming Statute 7-13-1501.¹

Wyoming's first *driving under the influence* (DUI) law was created in 1939 and provided that it was "[u]nlawful . . . [f]or any person who is a habitual user of narcotic drugs or any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle within this State."² In 1955, Wyoming adopted its first "per se" DUI law, which made it illegal to have a specific *alcohol concentration* (BAC) level of 0.15% or more while driving a motor vehicle.³ The 1955 "per se" DUI law also contained a

¹ 2015 Wyo. Sess. Laws, Chap. 164, §§ 1-2 (amending W.S. § 7-13-1501(a) to allow expungement of a broader scope of misdemeanor charges under Wyoming law, which can include a *driving under the influence* (DUI) charge).

² 1939 Wyo. Sess. Laws, Chap. 214, § 25.

³ 1955 Wyo. Sess. Laws, Chap. 97, § 1; Wyo. Comp. Stat. § 60-414(b)(3) (1945)(as amended and reenacted in 1955).

mandatory presumption of innocence that applied to all BAC results of 0.05% or less,⁴ which still remains in effect today.⁵

In 1961, the Wyoming Legislature amended the DUI law to prohibit both driving and the “actual physical control of a motor vehicle,”⁶ which was created “[t]o discourage intoxicated persons from making any attempt to enter a vehicle except as passengers or passive occupants.”⁷ In 1973, Wyoming’s “per se” BAC level was lowered from 0.15% or more, to 0.10% or more.⁸ In 1989, the Wyoming Legislature repealed the mandatory “presumption of guilt” associated with a specific “per se” BAC level, but retained the “presumption of innocence” associated with a BAC result of 0.05%.⁹ In 2002, the “per se” BAC level was reduced to its current level of 0.08% or more,¹⁰ and the 2002 presumption still exists today.

Wyoming’s first implied consent law was adopted in 1971¹¹ to make it easier for law enforcement to obtain biological samples in DUI cases.¹² Wyoming’s implied consent law creates a legal fiction that “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.”¹³

⁴ *Id.*, Wyo. Comp. Stat. § 60-414(b)(1) (1945) (as amended and reenacted in 1955)

⁵ W.S. § 31-5-233(c)(i)(Lexis/Nexis 2015).

⁶ W.S. § 31-129 (a) & (c) (1957) (as amended 1961).

⁷ *Adams v. State*, 1985 WY 50, ¶ 16, 697 P.2d 622, 625 (Wyo. 1985).

⁸ 1973 Wyo. Sess. Laws, Chap. 22, § 1.

⁹ 1989 Wyo. Sess. Laws, Chap. 118, § 1.

¹⁰ 2002 Wyo. Special Sess. Laws, Chap. 61, § 1; *see also*, W.S. § 31-5-233(c)(Lexis/Nexis 2015).

¹¹ 1971 Wyo. Sess. Laws, Chap. 158, §§ 1-7.

¹² *State v. Marquez*, 638 P.2d 1292, 1294 (Wyo. 1982)(quoting *State v. Chastain*, 594 P.2d 458, 461 (Wyo. 1979); *see also*, Donelson, A.C., et al., DRUG RESEARCH METHODOLOGY: VOLUME ONE, THE ALCOHOL-HIGHWAY SAFETY EXPERIENCE AND ITS APPLICABILITY TO OTHER DRUGS, at p. 26, (DOT-HS-7-01530) (March 1980)(“The intent underlying the legal BAC limit was simply to make convictions for driving-while-intoxicated easier to obtain and to get the drunken driver off the road.”).

¹³ W.S. § 31-6-102(a)(i)(Lexis/Nexis 2015).

In 2011, the Wyoming Legislature created some of the most significant changes to Wyoming's DUI and implied consent statutes, since Wyoming's implied consent law was first adopted in 1971.¹⁴ The most noteworthy changes to Wyoming's implied consent law involved amendments to the refusal provision of Wyoming Statute § 31-6-102(d), which retained the statutory ability to refuse to provide a biological sample chemical testing BUT created a new procedure for obtaining a telephonic warrant in refusal cases; as well as the repeal of all the driver's license suspension sanctions that were previously associated with an alleged refusal to provide a warrantless demand for a biological sample for chemical testing under former Wyoming Statute § 31-6-107.¹⁵ The 2011 amendments also limited the admissibility of any chemical test result that was obtained pursuant to Wyoming's implied consent law to DUI and implied consent cases and expressly prohibited their use "[f]or any other purpose."¹⁶

Implied consent laws were created for the purpose of conditioning a person's ability to operate a vehicle upon a public street of highway in a state upon the driver's waiver of their ability to refuse to provide voluntary consent to a warrantless demand by law enforcement for a biological sample for chemical testing.¹⁷ Although law enforcement may lawfully "request" a blood, breath or urine sample for chemical testing under Wyoming's implied consent law,¹⁸ currently the **ONLY** sanction for refusing to provide a biological sample for chemical testing after a DUI arrest is the possibility that the arresting officer may obtain a search warrant to draw the person's blood as allowed under Wyoming Statutes § 31-6-102(d) and the FOURTH

¹⁴ 2011 Wyo. Sess. Laws, Ch. 39, § 2. (Senate File 137); 2011 Wyo. Sess. Laws, Chapter 178, §§ 1-3 (House Bill 29).

¹⁵ 2011 Wyo. Sess. Laws, Ch. 178, § 2.

¹⁶ Wyoming Statute § 31-6-102(a)(iii)(as of July 1, 2011).

¹⁷ *State v. Chastain*, 1979 WY 62, ¶¶ 3-4, 594 P.2d 458, 461 (Wyo. 1979), *overruled on other grounds by Olson v. State*, 1985 WY 51, ¶ 21 698 P.2d 107, 113 (Wyo. 1985); Robert L. Donigan; CHEMICAL TESTS AND THE LAW Chap. XVI, *Implied Consent Laws*, p. 177 (Traffic Inst. Northwestern Univ.)(2nd Ed. 1966).

¹⁸ W.S. §§ 31-6-102(a)(iii)(C), 31-6-108(a) & 31-7-307(c)(Lexis/Nexis 2015), *see also*, W.S. §§ 31-6-102(d); 31-6-108(d) & 31-7-305(e)(Lexis/Nexis 2015)(where language was added to these statutes for law enforcement to apply for telephonic warrants with the enactment of Wyo. Sess. Laws 2011, Ch. 178, § 2).

AMENDMENT.¹⁹ It is now clearly established law in Wyoming that a person has the right to refuse a law enforcement officer's warrantless request/demand to provide a biological sample for chemical testing.²⁰

Wyoming currently has three (3) separate types of impaired driving charges that require three (3) different types of implied consent advisement: (1) a non-commercial DUI charge;²¹ (2) a Youthful-offender DUI charge;²² and, (3) a commercial DUI charge.²³

I. WYOMING'S "NON-COMMERCIAL" DRIVING WHILE UNDER THE INFLUENCE (DUI) CHARGE W.S. § 31-5-233(b)(Lexis/Nexis 2015).

Wyoming Statute § 31-5-233(b)(Lexis/Nexis 2015) provides as follows:

“(b) No person shall drive or have actual physical control of any vehicle within this state if the person:

(i) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more;

(ii) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, as measured

¹⁹ *Missouri v. McNeely*, 569 U.S. —, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013); *Smith v. State*, 2013 WY 122, ¶¶ 10-11, 311 P.3d 132, 135 (Wyo. 2013)(holding that *McNelly* overturned “per se” exigency rule of *Schmerber v. California*, 384 U.S. 757, 770, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) that allowed warrantless demands for biological samples based solely upon probable cause of a DUI).

²⁰ *Smith v. State*, 2013 WY 122, ¶¶ 10-11, 311 P.3d 132, 135 (Wyo. 2013)(holding that *Missouri v. McNeely*, ___ U.S. ___, ___, 133 S.Ct. 1552, 1556, 185 L.Ed.2d 696 (2013), and W.S. § 31-6-102(d) overruled the Fourth Amendment jurisprudence created by *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)); *Snell v. State*, 2014 WY 46, ¶¶ 15-17, 22, 322 P.3d 38, 43-44, 46 (Wyo. 2014)(finding arresting officer's probable cause affidavit was to conclusory to support probable cause valid blood draw under W.S. § 31-6-102(d) and the Fourth Amendment, even though there was after the fact evidence to support probable cause).

²¹ W.S. § 31-5-233(b)(Lexis/Nexis 2015).

²² W.S. § 31-5-234(Lexis/Nexis 2015).

²³ W.S. § 31-7-305(a)(ii)(Lexis/Nexis 2015)(because this statute does not contain a specific criminal punishment, the catchall provisions of W.S. § 31-7-136 (Lexis/Nexis 2015) are applied, if a criminal prosecution is pursued).

within two (2) hours after the time of driving or being in actual physical control of the vehicle following a lawful arrest resulting from a valid traffic stop; or

(iii) To a degree which renders him incapable of safely driving:

(A) Is under the influence of alcohol;

(B) Is under the influence of a controlled substance; or

(C) Is under the influence of a combination of any of the elements named in subparagraphs (A) and (B) of this paragraph.”

A. COVERED VEHICLES OR DEVICES:

Wyoming’s “Non-Commercial” DUI law applies to “**any vehicle**” that is being operated anywhere “within this state”²⁴

B. COVERED LOCATIONS:

Wyoming’s “Non-Commercial” DUI law applies anywhere “**within this state**.”²⁵ However, because Wyoming’s implied consent law is the “exclusive mechanism” for admission of chemical test results in DUI cases in Wyoming,²⁶ a person cannot be charged with a “per se” DUI charge under Wyoming Statute § 31-5-233(b)(i or ii)(Lexis/Nexis 2015) unless the prosecution can put the accused in “[a] motor vehicle upon a public street or highway in this state. . . .”²⁷

C. WHAT HAS TO BE PROVEN TO ESTABLISH AN “NON-COMMERCIAL” DUI CHARGE IN WYOMING:

²⁴ W.S. § 31-5-233(b)(Lexis/Nexis 2015).

²⁵ W.S. § 31-5-233(b)(iii)(Lexis/Nexis 2015).

²⁶ W.S. §§ 31-5-233(b), 31-5-233(k) & 31-6-105(a)(Lexis/Nexis 2014); *State v. Chastain*, 594 P.2d 458, 461 (Wyo. 1979), *overruled on other grounds by Olson v. State*, [1985 WY 51, ¶ 21] 698 P.2d 107, 113 (Wyo. 1985); *Van Order v. State*, 600 P.2d 1056, 1058 (Wyo. 1979); *State v. Marquez*, [1982 WY 5] 638 P.2d 1292, 1294 (Wyo. 1982); *Mogard v. City of Laramie*, 2001 WY 88, ¶ 3, 32 P.3d 313, 315 (Wyo. 2001); *Allen v. State*, 2002 WY 48, ¶ 22, 43 P.3d 551, 559 (Wyo. 2002).

²⁷ W.S. § 31-6-102(a)(i)(Lexis/Nexis 2015).

Wyoming’s non-commercial DUI law requires proof of either a “per se” *blood alcohol concentration* (BAC) level;²⁸ or, proof that the accused was under the influence of alcohol, controlled substance(s), or a combination to a degree the accused was incapable of safely driving or being in actual physical control of a vehicle.²⁹

1. PER SE DUI OFFENSE—

The statutory elements for Wyoming’s “per se” non-commercial DUI charge are:

“(b) No person shall drive or have actual physical control of any vehicle within this state [Wyoming] if the person:

(i) Has an alcohol concentration of eight one-hundredths of one percent (0.08%), or

(ii) Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, as measured within two (2) hours after the time of driving or being in actual physical control of the vehicle following a lawful arrest resulting from a valid traffic stop;”³⁰

Wyoming’s non-commercial DUI law provides the following “rebuttable” presumptions concerning the use of BAC results to attempt to prove a “per se” DUI charge beyond a reasonable doubt.³¹

²⁸ W.S. § 31-5-233(b)(i or ii)(Lexis/Nexis 2015).

²⁹ W.S. § 31-5-233(b)(iii)(Lexis/Nexis 2015).

³⁰ W.S. § 31-5-233(b)(i & ii)(Lexis/Nexis 2015).

³¹ *See*, Comment, *The New Implied Consent Amendments: A Step in the Right Direction*, 21 LAND & WATER L. REV. 165 (1986) for proposition legislature can limit constitutional rights, like due process right to confront witnesses, by setting forth the procedures and evidentiary standards for suspension of driver’s licenses in implied consent hearing); *Rodriguez v. State*, 2010 WY 170, ¶ 11, 245 P.3d 818, 822 (Wyo. 2010)(holding that it was improper to shift burden of proof for an element of a crime to the defendant); *Ellison v. State*, 2000 WY 76, ¶ 16, 3 P.3d 845, 848 (Wyo. 2000)(holding mandatory presumptions in criminal cases violate due process by relieving the prosecution of its burden to prove every element of a crime beyond a reasonable doubt); *see also*, *Stowes v. State*, 513 So.2d 86, 90-91 (Ala.Cr.App. 1987)(reversible error under due process for trial court to inform jury BAC result created a mandatory and irrebuttable presumption of guilt); *State v.*

“(c) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or being in actual physical control of a vehicle while under the influence of alcohol, the amount of alcohol in the person’s blood at the time alleged as shown by chemical analysis of the person’s blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

- (i) If there was at that time an alcohol concentration of five one-hundredths of one percent (0.05%) or less, it shall be presumed that the person was not under the influence of alcohol;
- (ii) If there was at that time an alcohol concentration of more than five one-hundredths of one percent (0.05%) and less than eight one-hundredths of one percent (0.08%), that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but it may be considered with other competent evidence in determining whether the person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.”³²

2. “UNDER THE INFLUENCE” TO A DEGREE “INCAPABLE OF SAFELY DRIVING”—“ALCOHOL” DUI OFFENSE

To prove beyond a reasonable doubt the general intent DUI charge of being “under the influence” of alcohol pursuant to Wyoming Statute § 31-5-233(b)(iii)(Lexis/Nexis 2015) the prosecution must prove “that a person had taken into his stomach a sufficient quantity of intoxicating liquor so as to deprive him of the normal control of his bodily or mental faculties.”³³

3. “CHILD ENDANGERMENT” DUI CHARGE

Wyoming’s “Child Endangerment” DUI statute is a sentencing enhancement statute which applies all of the other elements and penalties associated with a “per se” or “under the influence” non-commercial DUI

Brayman, 751 P.2d 294, 299 (Wash. 1988)(improper to shift burden of proof of validity of BAC result in DUI case to the defendant).

³² W.S. § 31-5-233(c)(Lexis/Nexis 2015).

³³ *Michaels v. State ex rel. Dept. of Transp.*, 2012 WY 33, ¶ 18, 271 P.3d 1003, 1009-1010 (Wyo. 2012)(quoting *Goich v. State*, 80 Wyo. 179, 339 P.2d 119, 120 (1959)(holding diabetic can assert a ketoacidosis defense to explain high BAC reading with a breath machine).

charge. To prove a “Child Endangerment” DUI offense the prosecution must establish the following two (2) additional elements:

- a) The accused/driver is eighteen (18) years of age or older; and,
- b) An occupant at least (16) years of age or younger riding in the accused’s vehicle at time of the DUI arrest.³⁴

4. WYOMING’S (FELONY) “SERIOUS BODILY INJURY” DUI CHARGE

Wyoming’s “Serious Bodily Injury” DUI statute is another sentencing enhancement statute that attaches all of the other elements and penalties associated with a “per se” or “under the influence” non-commercial DUI charge; however it obliges the prosecutor to prove the accused caused “serious bodily injury” to another while in the commission of the DUI charge.³⁵

D. PENALTIES FOR VIOLATION OF WYOMING’S “NON-COMMERCIAL” DUI LAW

Prior to sentencing in non-commercial DUI cases, a substance abuse evaluation must be completed and provided to the trial court under Wyoming law.³⁶

First DUI Offense in ten (10) years (MISDEMEANOR):

1. Jail term of up to 6 months; fine of up to \$750, or both;³⁷
2. 90-day license suspension in which person only eligible for driver’s license if install an ignition interlock;³⁸
3. If the underlying DUI conviction is based upon a BAC result of fifteen one-hundredths of one percent (0.15%) or more, then person can only drive a vehicle equipped with an ignition interlock device for a period of six (6) months from the date of conviction;³⁹
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁴⁰

³⁴ W.S. § 31-5-233(m)(Lexis/Nexis 2015).

³⁵ W.S. § 31-5-233(h)(Lexis/Nexis 2015).

³⁶ W.S. § 31-5-233(e)(Lexis/Nexis 2015).

³⁷ W.S. § 31-5-233(e)(Lexis/Nexis 2015).

³⁸ W.S. §§ 31-5-233(f)(i) & 31-6-102(e)(Lexis/Nexis 2015).

³⁹ W.S. §§ 31-5-233(f)(ii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

⁴⁰ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2015).

5. A probationary driver's license is available for ninety (90) day driver's license suspension so long as person makes a request for a record review to the Wyoming Department of Transportation (WYDOT);⁴¹
6. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁴²

Second DUI Offense in ten (10) years (MISDEMEANOR):

1. Minimum mandatory jail term of seven (7) days up to six (6) months **AND** minimum fine of \$200 up to \$750 fine;⁴³
2. 1 year license suspension with no right to a probationary driver's license;⁴⁴
3. After serving forty-five (45) days of the mandatory suspension, the licensee is eligible to apply for a restricted driver's license, so long as driving vehicle equipped with an ignition interlock device for the entire one (1) year suspension from the date of conviction;⁴⁵
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁴⁶
5. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁴⁷

Third DUI Offense in ten (10) years (MISDEMEANOR):

1. Minimum mandatory jail term of thirty (30) days up to six (6) months **AND** minimum fine of \$750 up to \$3000 fine;⁴⁸

⁴¹ W.S. § 31-7-105(f)(Lexis/Nexis 2015).

⁴² W.S. § 31-5-233(e)(Lexis/Nexis 2015).

⁴³ W.S. § 31-5-233(e)(Lexis/Nexis 2015).

⁴⁴ W.S. §§ 31-5-233(f)(i & iii); 31-7-105(f) & 31-7-128(b)(ii)(Lexis/Nexis 2015).

⁴⁵ W.S. §§ 31-5-233(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

⁴⁶ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2015).

⁴⁷ W.S. § 31-5-233(e)(Lexis/Nexis 2015).

⁴⁸ W.S. § 31-5-233(e)(Lexis/Nexis 2015)(fifteen (15) days of the minimum mandatory can be suspended if person goes into in-patient treatment after fifteen (15) days of incarceration). As of July 1, 2014,

2. Mandatory revocation of driving privileges with no right to a probationary driver's license;⁴⁹
3. After serving forty-five (45) days of the underlying suspension, the licensee is eligible to apply for a restricted driver's license, so long as driving vehicle equipped with an ignition interlock device for a two (2) year time period from date of conviction;⁵⁰
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁵¹
5. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁵²

Fourth DUI Offense (and more) within ten (10) years (FELONY):

1. Fourth or more DUI offenses within ten (10) years is a **Felony DUI** with a possible jail term of seven (7) years and a fine of not more than \$10,000.00, or both;⁵³
2. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁵⁴
3. Revocation of driving privileges and lifetime ignition interlock requirement; but allowed to petition court to remove ignition interlock requirement after five (5) years.⁵⁵

Wyoming Legislature has adopted "24/7 Sobriety" program which can be used in lieu of minimum mandatory jail sentence. *See*, 2014 Wyo. Sess. Laws, Chap. 47 (W.S. § 7-13-304(d) provides: "As a condition of probation or suspension of sentence, the court may require a defendant to complete successfully a court supervised treatment program qualified under W.S. 7-13-1601 through 7-13-1615, a 24/7 sobriety program under W.S. 7-13-1701 through 7-13-1711, or both.").

⁴⁹ W.S. §§ 31-5-233(f)(i & iv); 31-7-105(f) & 31-7-127(a)(ii)(Lexis/Nexis 2015).

⁵⁰ W.S. §§ 31-5-233(f)(i & iv) & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

⁵¹ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2015).

⁵² W.S. § 31-5-233(e)(Lexis/Nexis 2015).

⁵³ W.S. § 31-5-233(e)(Lexis/Nexis 2015).

⁵⁴ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2015).

⁵⁵ W.S. §§ 31-5-233(f)(v) & 31-7-127(a)(ii)(Lexis/Nexis 2015).

First Offense “Child Endangerment” (MISDEMEANOR) Enhanced Penalty:

1. All the penalties and sanctions associated with a first offense non-commercial DUI charge; and,
2. Possibility of not more than one (1) year in jail.⁵⁶

Second Offense (MISDEMEANOR) Enhanced Penalty:

1. All the penalties and sanctions associated with a first offense non-commercial DUI charge; and,
2. Possibility of not more than (5) years in jail, if previously convicted of child endangerment.⁵⁷

(FELONY) “SERIOUS BODILY INJURY” DUI Enhanced Penalty:

1. A fine of not less than two thousand dollars (\$2,000.00) nor more than five thousand dollars (\$5,000.00), imprisonment for not more than ten (10) years, or both.⁵⁸
2. If previously convicted and sentenced under the “serious bodily injury” DUI law or any other law substantially conforming to the “Serious Bodily Injury” DUI law by imprisonment for not more than twenty years (20) years.⁵⁹
3. Any person convicted under Wyoming’s “Serious Bodily Injury” DUI law “[s]hall have his driver’s license revoked as provided in W.S. § 31-7-127.”⁶⁰

E. PLEA AGREEMENT STATUTES:

A person charged with a DUI must be prosecuted for the DUI offense and the charge cannot be dismissed or reduced unless the prosecuting attorney states in open court, moves or files a statement to reduce or dismiss the

⁵⁶ W.S. § 31-5-233(m)(i)(Lexis/Nexis 2015).

⁵⁷ W.S. § 31-5-233(m)(ii)(Lexis/Nexis 2015).

⁵⁸ W.S. § 31-5-233(h)(i)(Lexis/Nexis 2015).

⁵⁹ W.S. § 31-5-233(h)(ii)(Lexis/Nexis 2015).

⁶⁰ W.S. § 31-5-233(h)(iii)(Lexis/Nexis 2015).

charge, with specific information setting forth how there is insufficient evidence to sustain the DUI charge.⁶¹

Wyoming has a statute that permits a prosecutor to defer a non-commercial or youthful-offender DUI charge, if the accused meets the statutory requirements for receiving a deferred prosecution under Wyoming's First Offender Statute.⁶² However, since July 1, 2011, commercial driver's license (CDL) holders can no longer receive possible first offender treatment for any DUI charge in any vehicle.⁶³

II. WYOMING'S "YOUTHFUL-OFFENDER" DUI CHARGE

A. COVERED VEHICLES OR DEVICES:

Wyoming's "Youthful Offender" DUI statute applies to "**a vehicle in this state.**"⁶⁴

B. COVERED LOCATIONS:

Wyoming's "Youthful Offender" DUI statute applies anywhere within the State of Wyoming.⁶⁵

C. NECESSARY PROOF FOR "YOUTHFUL-OFFENDER" DUI CHARGE:

The "Degree of Impairment" is not relevant to a "Youthful-Offender" charge, because the charge relies upon proof of the age of the offender and the alleged BAC result.⁶⁶ The statutory elements for Wyoming's Youthful-Offender DUI are as follows:

⁶¹ W.S. § 31-5-233(j)(Lexis/Nexis 2015); *see also, Lacombe v. City of Cheyenne*, 733 P.2d 601, 603 (Wyo. 1987)(leaving open the question whether this provision violates separation of powers by taking away the prosecutor's discretion for going forward with a case).

⁶² W.S. § 7-13-301 (Lexis/Nexis 2015).

⁶³ W.S. § 7-13-301(f)(Lexis/Nexis 2015)(enacted as 2011 Wyo. Sess. Laws Chap. 31, § 1).

⁶⁴ W.S. §§ 31-5-234(b)(Lexis/Nexis 2015).

⁶⁵ W.S. § 31-5-234(b)(Lexis/Nexis 2015).

⁶⁶ W.S. § 31-5-234(b)(Lexis/Nexis 2015).

“(b) A person younger than twenty-one (21) years of age shall not operate or be in actual physical control of a vehicle in this state with an alcohol concentration of two one-hundredths of one percent (0.02%) or more nor operate or be in actual physical control of a vehicle in this state with an alcohol concentration of two one-hundredths of one percent (0.02%) or more as measured within two (2) hours after the time of driving or being in actual physical control following a lawful arrest resulting from a valid traffic stop.”⁶⁷

D. PENALTIES FOR VIOLATION OF WYOMING’S “YOUTHFUL-OFFENDER” DUI LAW

A trial court “**may**” **order** the completion of a substance abuse evaluation by a “Youthful-Offender” **for any violation** of Wyoming’s “Youthful-Offender” DUI statute as a condition of probation.⁶⁸

First Offense (MISDEMEANOR):

1. Possible \$750 fine;⁶⁹
2. 90-day license suspension in which person only eligible for driver’s license if install an ignition interlock;⁷⁰
3. If conviction is based upon BAC result of fifteen one-hundredths of one percent (0.15%) or more, will result in an ignition interlock requirement for a six (6) month period from the date of conviction;⁷¹
4. A probationary driver’s license is available for ninety (90) day driver’s license suspension so long as person makes a request for a record review to the Wyoming Department of Transportation (WYDOT);⁷²
5. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁷³

⁶⁷ W.S. § 31-5-234(b)(Lexis/Nexis 2015).

⁶⁸ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁶⁹ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁷⁰ W.S. §§ 31-5-234(f)(i) & 31-7-128(h)(i)(A)(Lexis/Nexis 2015).

⁷¹ W.S. §§ 31-5-234(f)(ii); & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

⁷² W.S. § 31-7-105(f)(Lexis/Nexis 2015).

⁷³ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

Second Offense (MISDEMEANOR):

1. Possibility of one (1) month in jail, fine of not more than \$750, or both;⁷⁴
2. Six (6) month license suspension with no right to a probationary driver's license;⁷⁵
3. After serving forty-five (45) days of the six (6) month suspension, licensee is eligible to apply for a restricted driver's license, so long as driving vehicle equipped with an ignition interlock device for the entire one (1) year time frame from the date of the conviction;⁷⁶
4. There is no ability to get a probationary driver's license for subsequent DUI offenses;⁷⁷
5. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁷⁸

Third Offense or more (MISDEMEANOR):

1. Possibility of six (6) months in jail, fine of \$750, or both;⁷⁹
2. Six (6) month license suspension with no right to a probationary driver's license;⁸⁰
3. After serving forty-five (45) days of the six (6) month suspension, a licensee is eligible to apply for a restricted driver's license, so long as driving vehicle equipped with an ignition interlock device for the entire two (2) year time frame from the date of the conviction;⁸¹

⁷⁴ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁷⁵ W.S. §§ 31-5-234(f)(i & iii); 31-7-105(f); & 31-7-128(h)(i)(B) (Lexis/Nexis 2015).

⁷⁶ W.S. §§ 31-5-234(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

⁷⁷ W.S. § 31-7-105(f)(Lexis/Nexis 2015).

⁷⁸ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁷⁹ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁸⁰ W.S. §§ 31-5-234(f)(i & iv); 31-7-105(f) & 31-7-128(h)(B)(Lexis/Nexis 2015).

⁸¹ W.S. §§ 31-5-233(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

4. There is no ability to get a probationary driver's license for subsequent DUI offenses;⁸²
5. The trial court is allowed to exceed the maximum possible jail sentence allowed by law and place a person on probation not to exceed three (3) years.⁸³

III. WYOMING'S "COMMERCIAL" DUI CHARGE

A. COVERED VEHICLES OR DEVICES:

Wyoming's commercial DUI law only applies to a "**motor vehicle**" that requires the use of a commercial driver's license.⁸⁴

B. MANNERS OF PROOF OF "COMMERCIAL" DUI CHARGE:

Wyoming law allows WYDOT to disqualify CDL privileges for a period of one (1) year, if the accused has a BAC result of four one-hundredths of one percent (.04 percent) or more, while that person is operating a motor vehicle that requires a commercial driver's license.⁸⁵

Wyoming law also allows WYDOT to disqualify CDL privileges for a period of one (1) year, if the accused was driving or in actual physical control of any motor vehicle while under the influence of alcohol or a controlled substance to a degree which renders him incapable of safely driving the motor vehicle anywhere in the State of Wyoming.⁸⁶

Finally, Wyoming law allows WYDOT to take a person out of service for twenty-four (24) hours, if the accused was driving, operating or in actual physical control of a commercial at a time the person has ANY alcohol in their system.⁸⁷

⁸² W.S. § 31-7-105(f)(Lexis/Nexis 2015).

⁸³ W.S. § 31-5-234(e)(Lexis/Nexis 2015).

⁸⁴ W.S. § 31-7-305(b)(Lexis/Nexis 2015).

⁸⁵ W.S. § 31-7-305(a)(ii)(Lexis/Nexis 2015).

⁸⁶ W.S. § 31-7-305(a)(i)(Lexis/Nexis 2015).

⁸⁷ W.S. § 31-7-306 (Lexis/Nexis 2015)(Wyoming has a "no tolerance" policy that prohibits any person from consuming any alcohol and getting into a commercial vehicle).

C. PENALTIES FOR VIOLATING WYOMING'S "COMMERCIAL" DUI LAWS

Wyoming **does not** provide a criminal penalty for driving a commercial vehicle while under the influence of alcohol or a controlled substance. However, Wyoming law allows WYDOT to enforce the various drivers' license suspension sanctions with a general catchall criminal penalty, which can apply to a violation of Wyoming drivers' licensing laws.⁸⁸

"Except as otherwise provided by this act any person who violates any provision of this act is guilty of a misdemeanor and may be punished by a fine of not more than seven hundred fifty dollars (\$750.00), by imprisonment for not more than ninety (90) days, or both. On conviction for a second or subsequent violation, the person may be fined not more than seven hundred fifty dollars (\$750.00), imprisoned for not to exceed six (6) months, or both."⁸⁹

Because the catchall criminal provision contains the possibility of a jail sentence, Article 1, § 9 of the Wyoming Constitution creates an automatic right to a jury trial with charges that are pursued based upon the criminal catchall provision.⁹⁰

IV. WYOMING'S IMPLIED CONSENT LICENSE SUSPENSION LAWS:

A. CHEMICAL TESTS PERMITTED: Wyoming allows blood, breath or urine tests as designated by law enforcement agency, except where officer has probable cause to believe the person is under the influence of a controlled substance(s) in which case the officer can designate either a blood or urine test.⁹¹

⁸⁸ W.S. §§ 31-7-305 to 31-7-307 (Lexis/Nexis 2015).

⁸⁹ W.S. § 31-7-136(Lexis/Nexis 2015).

⁹⁰ *City of Casper v. Fletcher*, 916 P.2d 473, 474-475 (Wyo. 1996)(right to jury trial guaranteed by Article 1, § 9, of the Wyoming State Constitution applies if possibility of a jail sentence).

⁹¹ W.S. § 31-6-102(a)(i)(C)(Lexis/Nexis 2015).

“The results from the test or tests under this act shall only be used for the purposes of determining the chemical concentration as provided by this section and shall not be used for any other purpose.”⁹²

- B. TYPE OF ADVISEMENT REQUIRED: An officer must at least advise a person of the right to refuse to provide a biological sample for chemical testing; the ninety (90) day administrative driver’s license suspension associated with a “per se” DUI offense; the possibility of having to drive with an ignition interlock in the future based upon the BAC result; the right to have an independent test at own expense; and, the fact that Wyoming law currently does not allow the accused to speak with an attorney prior to making the choice of providing a warrantless biological sample for chemical testing.⁹³
- C. PENALTIES FOR REFUSAL: As of July 1, 2011, the Wyoming Legislature repealed the driver’s license suspension sanctions associated with refusing to provide a biological sample for chemical testing under Wyoming’s implied consent laws and created a process to obtain a warrant.⁹⁴
- D. ADMISSIBILITY OF REFUSAL: Since July 1, 2011, an alleged refusal to provide a biological sample for chemical testing is no longer subject to automatic admission by statute in a non-commercial DUI case, however, an alleged refusal to provide a biological sample for chemical testing is admissible to prove a violation of Wyoming “commercial” driving while impaired statute.⁹⁵
- E. ADMINISTRATIVE PER SE LAW: If person provides a biological sample for chemical testing that is analyzed and results in a BAC of 0.08% or more, then the person will have driving privileges suspended for ninety (90)

⁹² W.S. § 31-6-102(a)(iii)(Lexis/Nexis 2015).

⁹³ W.S. §§ 31-6-102(a)(i)(C), 31-6-102(a)(ii)(A-D)(Lexis/Nexis 2015); see also, *Escarcega v. State ex rel. Wyo. Dept. of Transp.*, 2007 WY 264, ¶¶ 17-21, 153 P.3d 264, 269-70 (Wyo. 2007)(citing *Nesius v. State Dept. of Revenue and Taxation, Motor Vehicle Div.*, 791 P.2d 939, 942-44 (Wyo. 1990); and, *Olson v. State*, [1985 WY 51, ¶ 21] 698 P.2d 107, 113 (Wyo. 1985).

⁹⁴ Laws 2011, Ch. 178, 2.

⁹⁵ W.S. § 31-7-307(m)(Lexis/Nexis 2015); W.S. § 31-6-105(f) (repealed by Laws 2011, Ch. 178, § 2).

days.⁹⁶ If a licensee is found guilty or pleads guilty to the underlying DUI charge that formed the basis of the implied consent violation, then the administrative suspension will run concurrent with any other suspension associated with the DUI conviction.⁹⁷

- F. PROBATIONARY DRIVER'S LICENSE: A probationary driver's license (PDL) is available for a person accused of a first offense within 10 years, who has not previously received a PDL within the last ten (10) years, so long as the person completes a substance abuse evaluation and pays the administrative fee associated with a "record review."⁹⁸
- G. IGNITION INTERLOCK: For a licensee who is not otherwise eligible for a probationary driver's license, the licensee may apply for a restricted driver's license, so long as the licensee has served forty-five (45) days of the suspension, pays \$125.00 administrative fee, and only drives a vehicle equipped with an ignition interlock device approved by WYDOT. The Licensee must have the interlock in their vehicle for either one (1) year or the length of their probation, depending on whichever is of the greatest length of time.⁹⁹ The Wyoming Legislature is considering legislation that would prevent a Licensee from getting credit for time spent while suspended or revoked to use against the mandatory ignition interlock time period.¹⁰⁰

V. WYOMING "YOUTHFUL-OFFENDER" IMPLIED CONSENT LAW:

- A. CHEMICAL TESTS PERMITTED: Blood, breath or urine as designated by law enforcement agency, except where officer has probable cause to believe person is under the influence of drugs in which case the officer can designate either blood or urine as the only test available.¹⁰¹
- B. TYPE OF ADVISEMENT REQUIRED: An officer must at least advise a person of the right to refuse to provide a biological sample and require the officer to obtain a warrant; the ninety (90) day administrative driver's license

⁹⁶ W.S. § 31-6-102(e)(Lexis/Nexis 2015).

⁹⁷ W.S. § 31-6-102(e)(Lexis/Nexis 2015).

⁹⁸ W.S. § 31-7-105(f)(Lexis/Nexis 2015).

⁹⁹ W.S. §§ 31-7-401 through 31-7-404 (Lexis/Nexis 2015).

¹⁰⁰ See, Senate File 77, 2015 Wyoming Legislature as made available on February 15, 2015 at <http://legisweb.state.wy.us/2015/Introduced/SF0077.pdf>

¹⁰¹ W.S. § 31-6-108(a)(ii)(Lexis/Nexis 2015).

suspension associated with a first offense and the six (6) month suspension associated with a subsequent offense; the possibility of having to drive with an ignition interlock in the future based upon the BAC result; the right to have an independent test at own expense; and, the fact Wyoming's implied consent law does not allow the accused to speak with an attorney prior to making the choice of providing biological sample for chemical testing.¹⁰²

- C. PENALTIES FOR REFUSAL: Since July 1, 2011, an alleged refusal to provide a biological sample for chemical testing is no longer subject to admission by statute in a non-commercial DUI case, however, there still exists a provision to admit an alleged refusal to provide a biological sample for chemical testing under Wyoming "commercial" driving while impaired laws.¹⁰³
- D. ADMISSIBILITY OF REFUSAL: Since July 1, 2011, a refusal to provide a biological sample for chemical testing during the implied consent advisement process with a youthful offender proceeding is no longer admissible as a result of statutory decree.¹⁰⁴
- E. ADMINISTRATIVE PER SE LAW: The suspension for a first offense "Youthful-Offender" implied consent violation is ninety (90) days.¹⁰⁵ The suspension for a subsequent offense "Youthful-Offender" implied consent violation is six (6) months.¹⁰⁶
- F. PROBATIONARY DRIVER'S LICENSE: A probationary driver's license is only available for a first offense.¹⁰⁷

VI. WYOMING CHEMICAL TESTING LAWS:

¹⁰² W.S. § 31-6-108(b)(i)(Lexis/Nexis 2015); *see also*, *Escarcega v. State ex rel. Wyo. Dept. of Transp.*, 2007 WY 264, ¶¶ 17-21, 153 P.3d 264, 269-70 (Wyo. 2007)(citing *Nesius v. State Dept. of Revenue and Taxation, Motor Vehicle Div.*, 791 P.2d 939, 942-44 (Wyo. 1990); and, *Olson v. State*, [1985 WY 51, ¶ 21] 698 P.2d 107, 113 (Wyo. 1985).

¹⁰³ W.S. §§ 31-6-108(b)(i), 31-6-108(e), 31-6-108(k), 31-6-108(n) & 31-6-108(p)(repealed by Laws 2011, Ch. 178, § 2).

¹⁰⁴ W.S. § 31-6-108(k)(repealed by Laws 2011, Ch. 178, § 2).

¹⁰⁵ W.S. §§ 31-6-108(b)(ii) & 31-7-128(h)(i)(A)(Lexis/Nexis 2015).

¹⁰⁶ W.S. §§ 31-6-108(b)(ii) & 31-7-128(h)(i)(B)(Lexis/Nexis 2015).

¹⁰⁷ W.S. §§ 31-6-108(f) & 31-7-105(f)(Lexis/Nexis 2015).

A. GENERAL PROVISIONS: To be valid, a blood, breath or urine test must be performed according to methods approved by the Wyoming Department of Health's Chemical Testing Program (WCTP) and by a person with a valid permit to conduct the analysis issued by the WCTP for that purpose.¹⁰⁸

B. COMPLIANCE WITH STATUTORY PREDICATE:

1. The state must prove compliance with the WCTP's scientific methods for analyzing biological samples to admit BAC results in any DUI or implied consent proceedings, because Wyoming's implied consent law is the exclusive mechanism for introduction of chemical test results in all DUI cases in Wyoming (non-commercial, commercial, and youthful-offender).¹⁰⁹
2. Because Wyoming's implied consent law only applies to "driving or actual physical control of a motor vehicle upon a **public street or highway in this state**,"¹¹⁰ it is possible to get a DUI while being parked, but the chemical test result should not be admissible.

C. ADMINISTRATIVE RULES & REGULATIONS: The WCTP's scientific methods for chemical analysis can be accessed through the Wyoming

¹⁰⁸ W.S. §§ 31-5-233(k), 31-5-234(h), 31-7-307(n) & 31-6-105(a)(Lexis/Nexis 2015); *see also*, WYOMING DEPARTMENT OF HEALTH, RULES AND REGULATIONS FOR CHEMICAL ANALYSIS FOR ALCOHOL TESTING (Dec. 2013)(hereinafter WCTP'S 2013 RULES).

¹⁰⁹ W.S. §§ 31-5-233(k) & 31-6-105(a)(Lexis/Nexis 2015). Since Wyoming's implied consent law was created in 1971, [Session Laws 1971, Chap. 158, §§ 1-7], the Wyoming Supreme Court has recognized that Wyoming's implied consent law is the exclusive mechanism for introduction of chemical test results in DUI cases. *See, Van Order v. State*, 600 P.2d 1056, 1058 (Wyo. 1979)(*citing State v. Chastain*, 594 P.2d 458, 461 (Wyo. 1979), *overruled on other grounds by Olson v. State*, [1985 WY 51, ¶ 21] 698 P.2d 107, 113 (Wyo. 1985); *Mogard v. City of Laramie*, 2001 WY 88, ¶ 3, 32 P.3d 313, 315 (Wyo. 2001).

¹¹⁰ W.S. §§ 31-6-102(a)(i), 31-6-102(a)(i)(C), 31-6-102(e)(i)(A), 31-6-103(b)(Lexis/Nexis 2015). *See, McClean v. State*, 2003 WY 17, ¶ 3 62 P.2d 595, 598-99 (Wyo. 2003)(private roadway can be a "public street or highway," if the roadway is open to the public and meant for "vehicular travel.").

Secretary of State's Office. The most recent rules went into effect on December 13, 2013 and abrogated the January 2004 rules and regulations. The current version of the WCTP's rules and regulations for conducting chemical analysis can be found at the following website: <http://soswy.state.wy.us/Rules/default.aspx>

D. DISCLOSURE OF TEST INFORMATION: Upon request, a person provides a biological sample for chemical testing under Wyoming's implied consent law is supposed to be entitled to "[f]ull information concerning the test or tests shall be made available to the person or his attorney."¹¹¹

E. INDEPENDENT RIGHT TO OWN TEST: If a person takes the test designated by the arresting officer, then they have the right to be taken to the nearest hospital or clinic to obtain their own independent test at their own expense. The failure or inability to obtain an additional test does not preclude the admissibility of the police test. The results of any tests obtained at the person's expense must be made available to the arresting officer.¹¹²

F. MEDICAL PERSONNEL REQUIRED FOR BLOOD DRAWS: Only a physician, registered nurse, qualified clinical or laboratory technician or other person who routinely does venipuncture at the direction of a physician may withdraw blood for purposes of chemical testing.¹¹³

¹¹¹ W.S. § 31-6-105(e)(Lexis/Nexis 2015); *Jones v. State ex rel. Wyoming Department of Transportation*, 1999 WY 160, ¶¶ 9-14, 991 P.2d 1251, 1255 (Wyo. 1999)(finding discovery in criminal case is different than discovery allowed in implied consent hearing).

¹¹² W.S. §§ 31-6-102(b) & 31-6-105(d)(Lexis/Nexis 2015).

¹¹³ W.S. § 31-6-105(b)(Lexis/Nexis 2015).