

SUMMARY OF WYOMING'S IMPAIRED DRIVING STATUTES

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The following information concerning Wyoming's impaired driving laws is based upon legislative and administrative enactments that were current as of July 1, 2014 and do not include any changes that may have been made during the 2015 Wyoming Legislative Session.

Since 1939, it has been unlawful in the State of Wyoming “[f]or any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle within this State.”¹ In 1955, it became unlawful for the first time in Wyoming to have a specific “per se” *blood alcohol concentration* (BAC) result of 0.15% or more while driving a motor vehicle.² The new “per se” DWUI law also contained the first mandatory presumption of innocence associated with a BAC result of 0.05% or less,³ which still remains in effect today.⁴ In 1961, the Wyoming Legislature broadened the scope of Wyoming’s DWUI law to include the ‘actual physical control of a motor vehicle,’⁵ which allows law enforcement to arrest people who are found within a vehicle while

¹ 1939 Wyo. Sess. Laws, Chap. 214, § 25; currently codified as W.S. § 31-5-233(b)(iii)(Lexis/Nexis 2014).

² 1955 Wyo. Sess. Laws, Chap. 97, § 1; Wyo. Comp. Stat. § 60-414(b)(3) (1945)(as amended and reenacted in 1955).

³ *Id.*, Wyo. Comp. Stat. § 60-414(b)(1) (1945) (as amended and reenacted in 1955)

⁴ W.S. § 31-5-233(c)(i)(Lexis/Nexis 2014).

⁵ W.S. § 31-129 (a) & (c) (1957) (as amended 1961).

intoxicated or otherwise incapable of safely driving, who are not a passenger.⁶ In 1973, Wyoming's "per se" BAC level was reduced from 0.15% or more, to 0.10% or more, while retaining the presumption of innocence associated with a BAC result of 0.05% or less.⁷ In 1989, the mandatory presumption of guilt associated with a specific "per se" BAC level was repealed, while the legislature retained the presumption of innocence associated with a BAC result of 0.05% or less.⁸ In 2002, the "per se" alcohol concentration level was again reduced to its current BAC level of 0.08% or more.⁹

In 1971, the Wyoming Legislature adopted Wyoming's first implied consent law¹⁰ for the purpose helping law enforcement to obtain chemical test evidence to use in DWUI cases.¹¹ The implied consent law creates a legal fiction that any person operating a vehicle upon a public street or highway "is deemed to have given consent" to a chemical test of their blood, breath or urine to determine blood alcohol concentration if they are arrested for a DWUI charge.¹²

⁶ *Adams v. State*, 1985 WY 50, ¶¶ 7, 16, 697 P.2d 622, 624, 625 (Wyo. 1985)(finding terms "actual physical control" were not vague and ambiguous and explaining that these terms were added to Wyoming's DWUI law "[t]o discourage intoxicated persons from making any attempt to enter a vehicle except as passengers or passive occupants.").

⁷ 1973 Wyo. Sess. Laws, Chap. 22, § 1.

⁸ 1989 Wyo. Sess. Laws, Chap. 118, § 1.

⁹ 2002 Wyo. Special Sess. Laws, Chap. 61, § 1.

¹⁰ 1971 Wyo. Sess. Laws, Chap. 158, §§ 1-7.

¹¹ *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).

¹² W.S. § 31-6-102(a)(i)(LexisNexis 2014); Robert L. Donigan; CHEMICAL TESTS AND THE LAW Chap. XVI, *Implied Consent Laws*, p. 177 (Traffic Inst. Northwestern Univ.)(2nd Ed. 1966).

Wyoming currently has: (1) a non-commercial DWUI charge;¹³ (2) a criminal charge for being under twenty-one (21) years of age while operating a vehicle with a *blood alcohol concentration* (BAC) of 0.02% or more (Youthful-offender DWUI);¹⁴ and, (3) a criminal charge for operating a commercial vehicle with a BAC of .04 or more (commercial DWUI).¹⁵

Although law enforcement may request compliance with Wyoming's implied consent law to obtain a blood, breath or urine sample for chemical testing,¹⁶ a person has no obligation to obey the officer's request and retains the right to refuse and require the arresting officer to obtain a warrant for a blood draw.¹⁷

¹³ W.S. § 31-5-233(b)(Lexis/Nexis 2014).

¹⁴ W.S. § 31-5-234(Lexis/Nexis 2014).

¹⁵ W.S. § 31-7-305(a)(ii)(Lexis/Nexis 2014)(because this statute does not contain a specific criminal punishment, the catchall provisions of W.S. § 31-7-136 (Lexis/Nexis 2014) are applied, if a criminal prosecution is pursued).

¹⁶ W.S. §§ 31-6-102(a)(iii)(C), 31-6-108(a) & 31-7-307(c)(Lexis/Nexis 2014).

¹⁷ W.S. §§ 31-6-102(d); 31-6-108(d) & 31-7-305(e)(Lexis/Nexis 2014)(warrant language was added to these statutes with the enactment of Wyo. Sess. Laws 2011, Ch. 178, § 2); *see also*, *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).

I. WYOMING'S "NON-COMMERCIAL" DRIVING WHILE UNDER THE INFLUENCE (DWUI) CHARGE

A. COVERED VEHICLES OR DEVICES:

Wyoming's "Non-Commercial" DWUI law applies to "**any vehicle** within this state"¹⁸

B. COVERED LOCATIONS:

Wyoming's "Non-Commercial" DWUI law applies anywhere "**within this state.**"¹⁹

C. WHAT HAS TO BE PROVEN TO ESTABLISH AN "NON-COMMERCIAL" DWUI CHARGE IN WYOMING:

Wyoming's non-commercial DWUI law requires proof of either a "per se" *blood alcohol concentration* (BAC) level;²⁰ 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.²¹

¹⁸ W.S. § 31-5-233(b)(Lexis/Nexis 2014).

¹⁹ W.S. § 31-5-233(b)(iii)(Lexis/Nexis 2014).

²⁰ The 1989 Wyoming Legislature enacted legislation entitled "*DWUI—PER SE LAW*" that repealed the mandatory presumption of guilt associated with a specific BAC level and lowered the BAC level from 0.10% to 0.08%. *See*, Wyo. Sess. Laws 1989, Chap. 118, § 1.

²¹ Wyoming's first "under the influence" law was created in 1939. [1939 Wyo. Sess. Laws, Chap. 214, § 25]. The Wyoming Legislature did not criminalize a specific BAC level until 1955, when there was a mandatory presumption that anyone with a BAC of 0.15% or more was "presumed" incapable of safely driving. [1955 Session Laws, Chap. 97, § 1].

1. PER SE DWUI OFFENSE—

The statutory elements for Wyoming’s “per se” non-commercial DWUI 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;”²²

Wyoming’s non-commercial DWUI law provides the following presumptions concerning the use of a BAC result to attempt to prove a non-commercial DWUI charge.²³

“(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

²² W.S. § 31-5-233(b)(i & ii)(Lexis/Nexis 2014).

²³ See generally, *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).

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.”²⁴

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

The statutory elements for Wyoming’s “Under the Influence” non-commercial DWUI charge are:

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

(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;²⁵

or

(C) Is under the influence of a combination of any of the elements named in subparagraphs (A) and (B) of this paragraph.”²⁶

To prove impairment in a “Non-Commercial” DWUI charge the prosecution must prove that the defendant was “under the influence” of

²⁴ W.S. § 31-5-233(c)(Lexis/Nexis 2014).

²⁵ The definition of “controlled substance” was expanded on July 1, 2010, to include: “Any drug or **psychoactive substance**, or any combination of these substances, capable of impairing a person’s physical or mental faculties.” Senate File 19, Wyo. Sess. Laws 2010, Ch. 5, § 1. (currently codified as W.S. § 31-5-233(a)(ii)(C)(Lexis/Nexis 2014)). Psychoactive substances include common ingredients in our food and drinks, like caffeine.

²⁶ W.S. § 31-5-233(b)(iii)(A-C)(Lexis/Nexis 2014).

intoxicating liquors and/or controlled substance “[s]o as to deprive him of the normal control of his bodily or mental faculties.”²⁷

3. “CHILD ENDANGERMENT” DWUI CHARGE

Wyoming’s “Child Endangerment” DWUI 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 DWUI charge. To prove a “Child Endangerment” DWUI 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 DWUI arrest.²⁸

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

Wyoming’s “Serious Bodily Injury” DWUI 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 DWUI charge; however it obliges the prosecutor to prove the accused caused “serious bodily injury” to another while in the commission of the DWUI charge.²⁹

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

Prior to sentencing in non-commercial DWUI cases, a substance abuse evaluation must be completed and provided to the trial court under Wyoming law.³⁰

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

²⁷ See generally, *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)).

²⁸ W.S. § 31-5-233(m)(Lexis/Nexis 2014).

²⁹ W.S. § 31-5-233(h)(Lexis/Nexis 2014).

³⁰ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

1. Jail term of up to 6 months; fine of up to \$750, or both;³¹
2. 90-day license suspension in which person only eligible for driver's license if install an ignition interlock;³²
3. If the underlying DWUI 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;³³
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);³⁴
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);³⁵
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.³⁶

Second DWUI 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;³⁷
2. 1 year license suspension with no right to a probationary driver's license;³⁸

³¹ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

³² W.S. §§ 31-5-233(f)(i) & 31-6-102(e)(Lexis/Nexis 2014).

³³ W.S. §§ 31-5-233(f)(ii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

³⁴ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2014).

³⁵ W.S. § 31-7-105(f)(Lexis/Nexis 2014).

³⁶ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

³⁷ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

³⁸ W.S. §§ 31-5-233(f)(i & iii); 31-7-105(f) & 31-7-128(b)(ii)(Lexis/Nexis 2014).

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;³⁹
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁴⁰
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.⁴¹

Third DWUI 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;⁴²
2. Mandatory revocation of driving privileges with no right to a probationary driver's license;⁴³

³⁹ W.S. §§ 31-5-233(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

⁴⁰ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2014).

⁴¹ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

⁴² W.S. § 31-5-233(e)(Lexis/Nexis 2014)(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, Wyoming Legislature has adopted "24/7 Sobriety" program which can be used in lieu of minimum mandatory ail 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.").

⁴³ W.S. §§ 31-5-233(f)(i & iv); 31-7-105(f) & 31-7-127(a)(ii)(Lexis/Nexis 2014).

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;⁴⁴
4. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁴⁵
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.⁴⁶

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

1. Fourth or more DWUI offenses within ten (10) years is a **Felony DWUI** with a possible jail term of seven (7) years and a fine of not more than \$10,000.00, or both;⁴⁷
2. Required to maintain proof of financial responsibility for three (3) years (SR-22);⁴⁸
3. Revocation of driving privileges and lifetime ignition interlock requirement; but allowing to petition court to remove ignition interlock requirement after five (5) years.⁴⁹

First Offense "Child Endangerment" (MISDEMEANOR) Enhanced Penalty:

1. All the penalties and sanctions associated with a first offense non-commercial DWUI charge; and,
2. Possibility of not more than one (1) year in jail.⁵⁰

⁴⁴ W.S. §§ 31-5-233(f)(i & iv) & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

⁴⁵ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2014).

⁴⁶ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

⁴⁷ W.S. § 31-5-233(e)(Lexis/Nexis 2014).

⁴⁸ W.S. §§ 31-5-233(f)(i); 31-7-127(c) & 31-7-128(e)(Lexis/Nexis 2014).

⁴⁹ W.S. §§ 31-5-233(f)(v) & 31-7-127(a)(ii)(Lexis/Nexis 2014).

⁵⁰ W.S. § 31-5-233(m)(i)(Lexis/Nexis 2014).

Second Offense (MISDEMEANOR) Enhanced Penalty:

1. All the penalties and sanctions associated with a first offense non-commercial DWUI charge; and,
2. Possibility of not more than (5) years in jail, if previously convicted of child endangerment.⁵¹

(FELONY) “SERIOUS BODILY INJURY” DWUI 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.⁵²
2. If previously convicted and sentenced under the “serious bodily injury” DWUI law or any other law substantially conforming to the “Serious Bodily Injury” DWUI law by imprisonment for not more than twenty years (20) years.⁵³
3. Any person convicted under Wyoming’s “Serious Bodily Injury” DWUI law “[s]hall have his driver’s license revoked as provided in W.S. § 31-7-127.”⁵⁴

E. PLEA AGREEMENT STATUTES:

A person charged with a DWUI must be prosecuted for the DWUI 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 charge, with specific information setting forth how there is insufficient evidence to sustain the DWUI charge.⁵⁵

⁵¹ W.S. § 31-5-233(m)(ii)(Lexis/Nexis 2014).

⁵² W.S. § 31-5-233(h)(i)(Lexis/Nexis 2014).

⁵³ W.S. § 31-5-233(h)(ii)(Lexis/Nexis 2014).

⁵⁴ W.S. § 31-5-233(h)(iii)(Lexis/Nexis 2014).

⁵⁵ W.S. § 31-5-233(j)(Lexis/Nexis 2014); *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).

Wyoming has a statute that permits a prosecutor to defer a non-commercial or youthful-offender DWUI charge, if the accused meets the statutory requirements for receiving a deferred prosecution under Wyoming's First Offender Statute.⁵⁶ However, since July 1, 2011, commercial driver's license (CDL) holders can no longer receive possible first offender treatment for any DWUI charge in any vehicle.⁵⁷

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

A. COVERED VEHICLES OR DEVICES:

Wyoming's "Youthful Offender" DWUI statute applies to **"a vehicle in this state."**⁵⁸

B. COVERED LOCATIONS:

Wyoming's "Youthful Offender" DWUI statute applies anywhere within the State of Wyoming.⁵⁹

C. NECESSARY PROOF FOR "YOUTHFUL-OFFENDER" DWUI 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.⁶⁰ The statutory elements for Wyoming's Youthful-Offender DWUI are as follows:

"(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

⁵⁶ W.S. § 7-13-301 (Lexis/Nexis 2014).

⁵⁷ W.S. § 7-13-301(f)(Lexis/Nexis 2014)(enacted as 2011 Wyo. Sess. Laws Chap. 31, § 1).

⁵⁸ W.S. §§ 31-5-234(b)(Lexis/Nexis 2014).

⁵⁹ W.S. § 31-5-234(b)(Lexis/Nexis 2014).

⁶⁰ W.S. § 31-5-234(b)(Lexis/Nexis 2014).

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.”⁶¹

D. PENALTIES FOR VIOLATION OF WYOMING’S “YOUTHFUL-OFFENDER” DWUI 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” DWUI statute as a condition of probation.⁶²

First Offense (MISDEMEANOR):

1. Possible \$750 fine;⁶³
2. 90-day license suspension in which person only eligible for driver’s license if install an ignition interlock;⁶⁴
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;⁶⁵
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);⁶⁶
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.⁶⁷

⁶¹ W.S. § 31-5-234(b)(Lexis/Nexis 2014).

⁶² W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁶³ W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁶⁴ W.S. §§ 31-5-234(f)(i) & 31-7-128(h)(i)(A)(Lexis/Nexis 2014).

⁶⁵ W.S. §§ 31-5-234(f)(ii); & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

⁶⁶ W.S. § 31-7-105(f)(Lexis/Nexis 2014).

⁶⁷ W.S. § 31-5-234(e)(Lexis/Nexis 2014).

Second Offense (MISDEMEANOR):

1. Possibility of one (1) month in jail, fine of not more than \$750, or both;⁶⁸
2. Six (6) month license suspension with no right to a probationary driver's license;⁶⁹
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;⁷⁰
4. There is no ability to get a probationary driver's license for subsequent DWUI offenses;⁷¹
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.⁷²

Third Offense or more (MISDEMEANOR):

1. Possibility of six (6) months in jail, fine of \$750, or both;⁷³
2. Six (6) month license suspension with no right to a probationary driver's license;⁷⁴
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

⁶⁸ W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁶⁹ W.S. §§ 31-5-234(f)(i & iii); 31-7-105(f); & 31-7-128(h)(i)(B) (Lexis/Nexis 2014).

⁷⁰ W.S. §§ 31-5-234(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

⁷¹ W.S. § 31-7-105(f)(Lexis/Nexis 2014).

⁷² W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁷³ W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁷⁴ W.S. §§ 31-5-234(f)(i & iv); 31-7-105(f) & 31-7-128(h)(B)(Lexis/Nexis 2014).

driving vehicle equipped with an ignition interlock device for the entire two (2) year time frame from the date of the conviction;⁷⁵

4. There is no ability to get a probationary driver's license for subsequent DWUI offenses;⁷⁶
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.⁷⁷

III. WYOMING'S "COMMERCIAL" DWUI CHARGE

A. COVERED VEHICLES OR DEVICES:

Wyoming's commercial DWUI law only applies to a "**motor vehicle**" that requires the use of a commercial driver's license.⁷⁸

B. MANNERS OF PROOF OF "COMMERCIAL" DWUI 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.⁷⁹

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.⁸⁰

⁷⁵ W.S. §§ 31-5-233(f)(i & iii) & 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

⁷⁶ W.S. § 31-7-105(f)(Lexis/Nexis 2014).

⁷⁷ W.S. § 31-5-234(e)(Lexis/Nexis 2014).

⁷⁸ W.S. § 31-7-305(b)(Lexis/Nexis 2014).

⁷⁹ W.S. § 31-7-305(a)(ii)(Lexis/Nexis 2014).

⁸⁰ W.S. § 31-7-305(a)(i)(Lexis/Nexis 2014).

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.⁸¹

C. PENALTIES FOR VIOLATING WYOMING’S “COMMERCIAL” DWUI 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.⁸²

“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.”⁸³

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.⁸⁴

⁸¹ W.S. § 31-7-306 (Lexis/Nexis 2014)(Wyoming has a “no tolerance” policy that prohibits any person from consuming any alcohol and getting into a commercial vehicle).

⁸² W.S. §§ 31-7-305 to 31-7-307 (Lexis/Nexis 2014).

⁸³ W.S. § 31-7-136(Lexis/Nexis 2014).

⁸⁴ *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).

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.⁸⁵

“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.”⁸⁶

B. TYPE OF ADVISEMENT REQUIRED: An officer must at least advise a person of the right to refuse a test; the ninety (90) day administrative driver's license suspension associated with a “per se” DWUI 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, fact Wyoming's law does not allow the accused to speak with an attorney prior to making the choice of providing biological sample for chemical testing.⁸⁷

C. PENALTIES FOR REFUSAL: As of July 1, 2011, the Wyoming Legislature repealed the driver's license suspension sanctions associated with refusing to submit to chemical testing under Wyoming's implied consent laws and created a process to obtain a warrant.⁸⁸

⁸⁵ W.S. § 31-6-102(a)(i)(C)(Lexis/Nexis 2014).

⁸⁶ W.S. § 31-6-102(a)(iii)(Lexis/Nexis 2014).

⁸⁷ W.S. §§ 31-6-102(a)(i)(C), 31-6-102(a)(ii)(A-D)(Lexis/Nexis 2014); *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).

⁸⁸ Laws 2011, Ch. 178, 2.

- D. **ADMISSIBILITY OF REFUSAL:** Since July 1, 2011, an alleged refusal to submit to a chemical test is no longer subject to admission by statute in a non-commercial DWUI case, however, there still exists a provision to admit an alleged refusal to submit to a chemical test under Wyoming “commercial” driving while impaired laws.⁸⁹
- 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) days.⁹⁰ If a licensee is found guilty or pleads guilty to the underlying DWUI charge that formed the basis of the implied consent violation, then the administrative suspension will run concurrent with any other suspension associated with the DWUI conviction.⁹¹
- 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.”⁹²
- 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.⁹³ The Wyoming Legislature is considering legislation that would prevent a Licensee from getting credit for time spent while

⁸⁹ W.S. § 31-7-307(m)(Lexis/Nexis 2014); W.S. § 31-6-105(f)(repealed by Laws 2011, Ch. 178, § 2).

⁹⁰ W.S. § 31-6-102(e)(Lexis/Nexis 2014).

⁹¹ W.S. § 31-6-102(e)(Lexis/Nexis 2014).

⁹² W.S. § 31-7-105(f)(Lexis/Nexis 2014).

⁹³ W.S. §§ 31-7-401 through 31-7-404 (Lexis/Nexis 2014).

suspended or revoked to use against the mandatory ignition interlock time period.⁹⁴

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.⁹⁵
- 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 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.⁹⁶
- C. PENALTIES FOR REFUSAL: Since July 1, 2011, an alleged refusal to submit to a chemical test is no longer subject to admission by statute in a non-commercial DWUI case, however, there still exists a provision to admit an

⁹⁴ See, Senate File 77, 2015 Wyoming Legislature as made available on February 15, 2015 at <http://legisweb.state.wy.us/2015/Introduced/SF0077.pdf>

⁹⁵ W.S. § 31-6-108(a)(ii)(Lexis/Nexis 2014).

⁹⁶ W.S. § 31-6-108(b)(i)(Lexis/Nexis 2014); 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).

alleged refusal to submit to a chemical test under Wyoming “commercial” driving while impaired laws.⁹⁷

- D. **ADMISSIBILITY OF REFUSAL:** Since July 1, 2011, a refusal to submit to a chemical test during the implied consent advisement process with a youthful offender proceeding is no longer admissible as a result of statutory decree.⁹⁸
- E. **ADMINISTRATIVE PER SE LAW:** The suspension for a first offense “Youthful-Offender” implied consent violation is ninety (90) days.⁹⁹ The suspension for a subsequent offense “Youthful-Offender” implied consent violation is six (6) months.¹⁰⁰
- F. **PROBATIONARY DRIVER’S LICENSE:** A probationary driver’s license is only available for a first offense.¹⁰¹

VI. WYOMING CHEMICAL TESTING LAWS:

- 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.¹⁰²
- B. **COMPLIANCE WITH STATUTORY PREDICATE:**

⁹⁷ 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).

⁹⁸ W.S. § 31-6-108(k)(repealed by Laws 2011, Ch. 178, § 2).

⁹⁹ W.S. §§ 31-6-108(b)(ii) & 31-7-128(h)(i)(A)(Lexis/Nexis 2014).

¹⁰⁰ W.S. §§ 31-6-108(b)(ii) & 31-7-128(h)(i)(B)(Lexis/Nexis 2014).

¹⁰¹ W.S. §§ 31-6-108(f) & 31-7-105(f)(Lexis/Nexis 2014).

¹⁰² W.S. §§ 31-5-233(k), 31-5-234(h), 31-7-307(n) & 31-6-105(a)(Lexis/Nexis 2014); *see also*, WYOMING DEPARTMENT OF HEALTH, RULES AND REGULATIONS FOR CHEMICAL ANALYSIS FOR ALCOHOL TESTING (Dec. 2013)(hereinafter WCTP’S 2013 RULES).

1. The state must prove compliance with the WCTP's scientific methods for analyzing biological samples to admit BAC results in any DWUI or implied consent proceedings, because Wyoming's implied consent law is the exclusive mechanism for introduction of chemical test results in all DWUI cases in Wyoming (non-commercial, commercial, and youthful-offender).¹⁰³
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**,"¹⁰⁴ it is possible to get a DWUI 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 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>

¹⁰³ W.S. §§ 31-5-233(k) & 31-6-105(a)(Lexis/Nexis 2014). 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 DWUI 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).

¹⁰⁴ 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 2014). *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.").

D. DISCLOSURE OF TEST INFORMATION: Upon request, a person that submits to chemical testing under Wyoming's implied consent law for a possible DWUI case is supposed to be entitled to "[f]ull information concerning the test or tests shall be made available to the person or his attorney."¹⁰⁵

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.¹⁰⁶

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.¹⁰⁷

¹⁰⁵ W.S. § 31-6-105(e)(Lexis/Nexis 2014); *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).

¹⁰⁶ W.S. §§ 31-6-102(b) & 31-6-105(d)(Lexis/Nexis 2014).

¹⁰⁷ W.S. § 31-6-105(b)(Lexis/Nexis 2014).