

STATE:	WYOMING
General Reference:	Wyoming Statutes Annotated
<u>Basis for a DWI Charge:</u>	
Standard DWI Offence:	Under the influence of alcohol §31-5-233(b)(ii)(A)
Illegal Per Se Law (BAC/BrAC):	≥.08 ^{1319and1320} §31-5-233(b)(i)
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a Controlled Substance ¹³²¹ or (2) a Combination of Alcohol and Any Controlled Substance §31-5-233(b)(ii)(B) and (C)
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Law:	No ¹³²²
Implied Consent Law:	
Arrest Required (Yes/No):	Yes §§31-6-102(a)(i) and 31-6-108(a) (Implied consent to test for alcohol concentration for persons under 21 years old where there is probable cause that they are driving with a BAC/BrAC/UrAC ≥.02.)
Implied Consent Law Applies to Drugs (Yes/No):	Yes §31-6-102(a)(i)
Refusal to Submit to Chemical Test Admitted into Evidence:	Yes (Criminal and Civil Cases) §§31-6-105(f) and 31-6-108(k)
Other Information:	For <u>any</u> DWI offense, a test may be required in cases where serious bodily injury or death has resulted. §31-6-102(d)
<u>Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:</u>	
Blood:	Yes
Urine:	Yes
Other:	None
<u>Adjudication of DWI Charges:</u>	
Mandatory Adjudication Law (Yes/No):	No

¹³¹⁹ This State's illegal per se law also makes it an offense to operate a motor vehicle with either a breath or urine alcohol concentration of .08 or more. §31-5-233(a) and (b)(i)

¹³²⁰ Alcohol concentration is defined as either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath or grams of alcohol per 75 milliliters of urine. §31-5-233(a)(i) and 31-6-101(a)(i)

¹³²¹ Includes glue, aerosol or other toxic vapor. §§31-5-233(a)(ii) and 31-6-101(a)(ii)

¹³²² Preliminary breath test (PBT) devices are being used by State law enforcement officers even though there is no statutory authorization for such use. The State Supreme Court has noted the use of PBT devices by the police but the issue of whether their use requires statutory authorization has not been presented to the court for a decision. *Nellis v. Wyoming Dept. of Transportation*, 932 P.2d 741 (Wyo. 1997).

Anti-Plea-Bargaining Statute (Yes/No): **Yes** §31-5-233(j) A DWI charge may not be reduced or dismissed, unless the State in open court moves or files a statement containing supporting facts to indicate that there is insufficient evidence to support the original DWI charge.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law (continued)

Pre-Sentencing Investigation Law (PSI) (Yes/No): **No**

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): **N/A**
 Administrative Licensing Action (Susp/Rev): **N/A**
 Other: **N/A**

Refusal to Take Implied Consent Chemical Test:
 Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev): **First Refusal – Suspension – 6 months¹³²³; second or subsequent refusal (within 5 years)¹³²⁴ – Suspension – 18 months (Mandatory). §§31-6-102(c), 31-6-107(a) and 31-7-105(d)**

Special Note: If a person refuses to submit to chemical test but pleads guilty to a DWI offense within 10 days of arraignment, the suspension for refusal shall not take effect. §31-6-107(a)(iii)

Other: **Persons Under 21 Years Old:** A person under 21 years old who is arrested for driving with an alcohol concentration $\geq .02$ under §31-5-234 and who refuses to submit to a chemical test under §31-6-108 is subject to a **mandatory license suspension of 90 days.** §31-6-108(n)(i) Limited driving privileges based on “undue hardship” are not available unless there have been no priors within 5 years and the offender agrees to education or treatment. §31-7-105(f)(iii)

¹³²³ After 45 days, an “**ignition interlock restricted license**” may be issued for the balance of the suspension or revocation period or one year, whichever is greater. §31-7-402

¹³²⁴ A person is also subject to this enhanced licensing sanction if convicted of a previous DWI offense. §31-6-107(a)(ii)(B)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years,
Etc.):

First offense: Misdemeanor – Not more than **6 months**; second offense (within 5 years) Misdemeanor - **7 days to 6 months**¹³²⁵; third or subsequent offense – (within 5 years) Misdemeanor – **30 days to 6 months**. Serious bodily injury offense: first offense – Misdemeanor – **6 months to 1 year**; Subsequent offenses: felony – Not more than **20 years**. §§6-10-101 and 31-5-233(e), (h) and (g)

Mandatory Minimum Term:

First offense – **None**; second offense (within 5 years) – **7 days**; third or subsequent offense (within 5 years) – **30 days or 15 days** if the offender completes an impatient treatment program. §31-5-233(e) Under §31-5-233(g), a defendant may be allowed out of jail long enough to complete actual hours of employment or education and a reasonable time to travel to and from employment or school (i.e., work/school release program). §31-5-234(e) and (g).

Fine:

Amount (\$ Range):

Persons Under 21: first offense – **\$750 fine**; second offense (within 1 year) – jail for not more than **1 month**, fine of **\$750**; third or subsequent offense (within 2 years) – jail for not more than **6 months**, fine of **\$750**.

Mandatory Min. Fine (\$):

First offense – Not more than **\$750**; second offense – **\$200 to \$750**; third or subsequent offense – **\$750 to \$3,000**. Serious bodily injury DWI offense – first offense – **\$2,000 to \$5,000**; subsequent offense – not more than **\$10,000**. §§6-10-101 and 6-10-102 A surcharge of \$100 is assessed against convicted DWI offenders. This surcharge is used to help finance the Victims' Compensation Fund. §1-40-119(a)(ii) **None**

¹³²⁵ The discretionary portion of a jail sentence may be suspended if the defendant agrees to pursue and complete an alcohol education and treatment program. §31-5-233(e)

Double Jeopardy: Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Glasrud v. City of Laramie*, 934 P.2d 1242 (Wyo. 1997).

Other Penalties:
Community Service:

Possible. Community service may be required as a condition of probation. §7-13-304

Restitution
(e.g., Victim's Fund)

Yes. (1) The defendant may be ordered to pay restitution to a victim. §7-9-102 (2) The State has a Victims' Compensation Act. §1-40-101 et seq.

Other:

Cost of Incarceration: A DWI offender sentenced to confinement may be required to pay the local government for the cost of their incarceration. This requirement does not apply if the offender does not have the ability to pay for such cost. §7-13-109

Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes. \geq .08BAC/BrAC/UrAC – suspension 90 days¹³²⁶; second or subsequent offense – 1 year. §§31-5-1205(k), 31-6-101(a)(i), 31-6-102(e), 31-6-103(b), 31-7-105(d) and 31-7-138

There appears to be a conflict between §§31-6-103(b) and 31-7-105(d). Section 31-6-103(b) (See the last sentence) seems to grant the licensing agency (hearing examiner) the authority to provide for limited driving privileges in hardship situations to persons who have submitted to an implied consent test and who are found to be in violation of the admin per se provisions (§31-6-102(e)). However, §31-7-105(f)(iv) (D) clearly states that no such limited privileges are to be granted to a person who has had the driver's license suspended under §31-6-102.

Other:

Persons Under 21 Years Old: A person who is under 21 years old is subject to administrative suspension of their driver's license by operating a motor vehicle with an alcohol concentration \geq .02. §31-5-234
First violation – 90-day suspension; second violation¹³²⁷ (within 2 years) – 6-month suspension §31-7-128(h)
An offender is eligible for hardship driving privileges. However, such privileges can only be granted once within a 5-year period. §31-7-105(f)

¹³²⁶ For a first admin per se action, the 90-day suspension may be modified to allow for limited driving privileges in hardship situations. §§31-6-103(b) and 31-7-105(d)(ii)

¹³²⁷ For purposes of license sanction enhancement, a previous violation includes a drunk-driving conviction. §31-7-128(h)

Post DWI Conviction Licensing Action:

Type of Licensing Action
(Susp/Rev):

First offense – **Suspension**; second offense (within 5 years) – **Suspension**; third and subsequent offenses (within 5 years) – **Revocation**
DWI Serious Bodily Injury offenses – **Revocation** §§31-7-105(d), 31-7-127(a)(ii) and 31-7-128(b)

Term of License Withdrawal
(Days, Months, Years, etc.):

First offense – **90 days**¹³²⁸; second offense (within 5 years) – **1 year**; third and subsequent offenses – **3 years**. DWI Serious bodily injury offenses.

Mandatory Minimum Term of
Withdrawal:

First offense – **None** - hardship driving privileges are available¹³²⁹; second offense (within 5 years) – **1 year**¹³³⁰; third and subsequent offenses (within 5 years) – **3 years**. DWI Serious Bodily Injury Offenses. **DWI Serious Bodily Injury Offenses:** A conviction for a serious bodily injury DWI offense results in mandatory license revocation action. §31-5-233(h)(iii) However, Wyoming law does not provide specific guidance as to the revocation periods for either first or subsequent offenses.
I. For a first offense, the law establishes no clear period of mandatory license revocation. The mandatory one-year license revocation provisions of §31-7-127(a)(i) and (b) would not apply to a first conviction for a DWI serious bodily injury offense as such offenses are not felonies. This section provides for a one-year mandatory license revocation for any felony conviction related to the operation of a motor vehicle. However, a felony is defined as any offense for which a person may be sentenced to serve more than one year in prison. §6-10-101 For a first DWI serious

¹³²⁸ A person convicted of a DWI offense shall have the suspension period for this offense reduced by 90 days if such person was also subject to a suspension under the admin per se law. §31-6-102(e)

¹³²⁹ **Limited Driving Privileges:** Persons who have had their licenses suspended may be granted limited driving privileges based on “undue hardship.” Such privileges can only be granted once in a 5-year period. In addition, such privileges cannot be granted to anyone either who has been convicted of a drunk-driving offense within a 5-year period or who has had his/her driving privileges revoked. For drunk-driving law violators, these privileges can only be granted on the condition that the offender agrees to pursue and complete either an alcohol education or treatment program. §31-7-105(f)

¹³³⁰ After 45 days, an “**ignition interlock restricted license**” may be issued for the balance of the suspension or revocation period or one year, whichever is greater. §31-7-402

bodily injury offense conviction, the maximum prison term is only one year. §31-5-233(h)(i) Thus, this offense is not a felony. Of course, the three-year mandatory license revocation for DWI convictions (§31-5-233 convictions) under §31-7-127(a)(ii) would only occur if this is a third or subsequent offense committed within a 5-year period. As a result, arguably the law does not appear to provide for a specific license revocation period for a first DWI serious bodily injury offense.

As far as mandatory license revocations for subsequent offenses are concerned, the issue is whether a conviction for such an offense will result in either a one-year or a three-year period of revocation. Subsequent convictions for serious bodily injury DWI offenses are felony convictions since a defendant may be sentenced to serve up to 20 years in prison. §§6-1-101 and 31-5-233(h)(ii) Consequently, a license would be revoked for at least one year as noted above under §31-7-127(a)(i) and (b). However, as also noted above, if three or more subsequent DWI convictions occur within a 5-year period, a license could be revoked for years. Section 31-7-127(a)(ii) does not distinguish between subsequent "regular" and subsequent serious bodily injury DWI offenses for license revocation purposes. As such, the three-year license revocation period applies to both types of offenses.

Rehabilitation:
Alcohol Education:

- Yes.** 1. The court may suspend part or all of the discretionary portion of an imprisonment sentence under §31-5-233(e) if the defendant agrees to pursue and completes an alcohol education or treatment program as prescribed by the court.
- 2. The mandatory incarceration sanction for a third or subsequent DWI offender may be reduced from 30 days to 15 days if the defendant completes an impatient treatment program. §31-5-233(e)
- 3. In order to obtain hardship driving privileges, the defendant must agree to pursue and complete an alcohol education and treatment program prescribed by the driver licensing agency. §31-7-105(f)(iii).

Vehicle Impoundment/Confiscation:
 Authorized by Specific
 Statutory Authority: **No**
 Terms Upon Which Vehicle
 Will Be Released:

Other: For a subsequent DWI conviction (within 2 years), a defendant's vehicle registration shall be suspended for the same period as the driver's license revocation/suspension. §31-7-128(c)

Other Criminal Actions Related to DWI:
Homicide by Vehicle:
 State Has Such a Law: **Yes.** There are two types of offenses: 1.) Death caused by operation of a vehicle in violation of the motor vehicle laws regulating traffic control **-misdemeanor**; and 2.) Aggravated vehicle homicide if death caused via DWI – **felony.** §§6-2-106 and 6-10-101

Sanctions:
 Criminal Sanction:
 Imprisonment (Term): 1.) Death by a violation of the motor vehicle laws – Not more than **1 year**; 2.) Aggravated vehicle homicide via DWI – Not more than **20 years.**

Mandatory Minimum Term:
 Fine (\$ Range): **None**
 Death caused by a violation of the motor vehicle laws – Not more than **\$2,000**; 2.) Aggravated vehicle homicide via DWI – **None.**

Mandatory Minimum Fine: **None**

Administrative Licensing Action:
 Licensing Authorized and
 Type of Action: **Revocation** §§6-2-106(c), 31-7-127(a)(vii) and 31-7-127(b)

Length of Term of
 Licensing Withdrawal: **1 year**
 Mandatory Action--Minimum
 Length of License
 Withdrawal: **1 year.**

Other: **Surcharge:** An offender is assessed a surcharge of **\$100.** This surcharge is in addition to any other sanction. §1-40-119(a)(i)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for not less than 1 mandatory year (not less than 3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has an alcohol concentration $\geq .04$, (2) is under the influence of alcohol or a controlled substance or

(3) refuses to submit to a chemical test for alcohol concentration. The disqualification provision (§31-7-305) applies only to a refusal to submit to a chemical test for an alcohol concentration; however, the CMV implied consent provision (§31-7-307) applies to refusals to submit to chemical tests for both an alcohol concentration and the presence of controlled drugs. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above-listed items, the "disqualification" is for life (10 years mand). In addition, a CMV operator who has any alcohol in the system must be placed "out-of-service" for 24 hours. It appears to be a misdemeanor offense for a person to operate a CMV while having any alcohol in the system. The sanctions for this offense would seem to be an imprisonment term of not more than 90 days and/or a fine of not more than \$750 for a first offense and an imprisonment term of not more than 6 months and/or a fine of not more than \$750 for a subsequent one. §§31-7-102(a)(ii), (vi), (viii), (xiii) and (xxxii), 31-7-136, 31-7-305, 3-7-306 and 31-7-307.

Driving While License Suspended or Revoked

Where the Basis Was a DWI Offense:¹³³¹ §31-7-134.

Sanction:

Criminal:

Imprisonment (Term): **Misdemeanor** – Not less than **7 days** not more than **6 months** §31-7-134(c)

Mandatory Minimum Term of Imprisonment: **7 days**¹³³² §31-7-134(c)

Fine (\$ Range): Not less than **\$200** nor more than **\$750** §31-7-134(c)

Mandatory Minimum Fine: **\$200** §31-7-134(c) Note: The minimum fine appears to be mandatory.

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev): None additional

Length of Term of License Withdrawal Action: N/A

Mandatory Term of License Withdrawal Action: N/A

Habitual Traffic Offender Law:

State Has Such a Law (Yes/No): **No**

Other State Laws Related to Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

¹³³¹ There appears to be no specific statutory provision that prohibits a person from operating a CMV during either a CDL disqualification or a CDL out-of-service order. However, the general statutory prohibition (§31-7-134) against driving while a license is suspended or revoked may apply. Notwithstanding, a person who has been convicted of violating a CDL out-of-service order is subject to the following disqualification periods: first offense – 90 days (mand) to 1 year; second offense (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent offense (within 10 years) – 3 years (mand) to 5 years. The following disqualification periods apply if the violation occurred while operating a CMV which is transporting hazardous materials or which is designed to carry >15 persons: first offense – 180 days (mand) to 2 years; second or subsequent offense (within 10 years) – 3 years (mand) to 5 years. §31-7-305(g)

¹³³² If the offender is under 21 years old and the alcohol concentration for the drunk-driving offense was between .02 and .08, that person is not subject to the mandatory 7-day jail term but, is instead subject to a mandatory administrative license suspension for 30 days. §31-7-134(c)

State Has Such a Law (Yes/No): **No**

Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §12-6-101(a) and (c)

Minimum Age (Years) Possession: **21** Applies to possession in a public place. There are exemptions for either employment or by order of a parent. §12-6-101(b)

Minimum Age (Years) Consumption: **None**

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **Yes Limited**^{1333and1334} §12-8-301

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

No. Note: Case law, *McClellan v. Tottenhoff*, 666 P.2d 408 (Wyo. 1983), apparently abrogated by §12-8-301

Dram Shop Actions-Social Hosts:

Yes Limited. Social hosts who serve alcoholic beverages illegally, such as to persons who are under 21 years old and who are not their child or ward, etc., may be liable for the resulting damages. §12-8-301(c)

Other:

A licensee is not liable for the injuries sustained by a patron who has been legally served alcoholic beverages. §12-8-301(a) and *Daley v. Wenzel*, 30 P.3d 547 (Wyo. 2001).

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor Limited Application Under §§12-5-301(a)(v) and 12-8-101, it is illegal for licensees to sell sealed packages of alcoholic beverages to intoxicated persons in certain "drive-in areas."

Term of Imprisonment:

Not more than **6 months**

Fine (\$ Range):

Not more than **\$750**

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

¹³³³ Sec. 12-8-301(a) specifically prohibits dram shop type actions against anyone (e.g., licensees and social hosts) who has legally served or furnished alcoholic beverages to another person. Dram shop liability only applies if the person serving or furnishing such beverages violates Title 12, Alcoholic Beverages, of the Wyoming Statutes.

¹³³⁴ Under §12-5-502, a licensee who serves alcoholic beverages to an habitual drunkard after having been notified not to do so may be held liable for the support of the habitual drunkard's spouse or dependant.

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** §12-7-101 Limited Application. See §12-5-301(a)(v) and the statement above under criminal sanctions.

Length of Term of License Withdrawal: A suspension is not to exceed the balance of the term for which the license was issued; as for revocation, no time period is specified in the statute. §12-7-102

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action: **Misdemeanor** §§12-5-301, 12-6-101 and 12-8-101
Term of Imprisonment: Not more than **6 months**
Fine (\$ Range): Not more than **\$750**

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages
Withdrawn (Yes/No): **Yes** Suspension or revocation where there is gross violation of the law. §12-7-101
Length of Term License Withdrawal: A suspension is not to exceed the balance of the term for which the license was issued; as for revocation, no time period is specified in the statute. §12-7-102

Anti-Happy Hour Laws/Regulations: **No**

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **No**
Anti-Consumption Law (Yes/No): **No**