

HOUSE BILL NO. HB0147

Release of arrested persons under the influence.

Sponsored by: Representative(s) Gray, Clem, Jennings and
Steinmetz and Senator(s) Hicks

A BILL

for

1 AN ACT relating to criminal procedure; specifying when
2 persons arrested for driving under the influence of alcohol
3 may be released; amending related statutes pertaining to
4 bail; and providing for an effective date.

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6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 7-10-101(a), 7-10-102 and 31-5-233 by
9 creating a new subsection (n) are amended to read:

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11 **7-10-101. Right of defendant.**

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13 (a) Except as provided in W.S. 31-5-233(n) a person
14 arrested for an offense not punishable by death may be
15 admitted to bail.

1

2 **7-10-102. Matters governed by rules.**

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4 Except as provided in W.S. 31-5-233(n) the rules
5 promulgated by the Wyoming supreme court shall govern in
6 all matters relating to the terms, amount and conditions of
7 bail, justification of sureties and procedures for
8 forfeiture, enforcement and exoneration upon breach or
9 default of the conditions of bail.

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11 **31-5-233. Driving or having control of vehicle while**
12 **under influence of intoxicating liquor or controlled**
13 **substances; penalties.**

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15 (n) Any person arrested for a violation of subsection
16 (b) of this section shall not be released from custody
17 before the person's alcohol concentration is less than
18 eight one-hundredths of one percent (0.08%). This
19 subsection does not create an entitlement to release, nor
20 does it otherwise limit a judicial officer's discretion to
21 impose conditions for release. In conformity with this
22 subsection:

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1 (i) The sheriff, or other authority having
2 custody of the arrested person, may maintain a uniform
3 policy that requires a lower alcohol concentration before
4 an arrested person may be released;

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6 (ii) The sheriff, or other authority having
7 custody of the arrested person, shall offer to test an
8 arrested person's alcohol concentration no less than once
9 every 90 minutes;

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11 (iii) In the event the arrested person refuses
12 to be tested for release, the person may be released only
13 after the sheriff, or other authority having custody of the
14 arrested person, determines the person to be capable of
15 safely operating a motor vehicle;

16
17 (iv) In no instance shall the determination,
18 action or inaction under paragraph (ii) or (iii) of this
19 subsection be considered tortious conduct of a peace
20 officer under W.S. 1-39-112;

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1 (v) Failure of the sheriff or other custodian to
2 comply with this subsection shall not constitute a defense
3 to a charge under this section.

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5 **Section 2.** This act is effective July 1, 2017.

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7

(END)