

HOUSE BILL NO. HB0147

DUI-child endangerment.

Sponsored by: Representative(s) Hinckley, Berger, Gingery,
Lubnau, Pedersen, White and Zwonitzer and
Senator(s) Ross

A BILL

for

1 AN ACT relating to driving under the influence; providing
2 additional penalties for driving under the influence with a
3 child in the vehicle; providing for investigation by child
4 protective services; amending a limitation on use of
5 discharge or dismissal of prior convictions as specified;
6 and providing for an effective date.

7

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

9

10 **Section 1.** W.S. 7-13-301(d), 14-3-202(a)(ii)(D),
11 31-5-233(a) by creating a new paragraph (vi), (e) and by
12 creating a new subsection (m) and 31-5-234(a) by creating a
13 new paragraph (v), (g) and by creating a new subsection (j)
14 are amended to read:

15

1 **7-13-301. Placing person found guilty, but not**
2 **convicted, on probation.**

3
4 (d) Except as otherwise provided by law, discharge
5 and dismissal under this section shall be without
6 adjudication of guilt and is not a conviction for any
7 purpose.

8
9 **14-3-202. Definitions.**

10
11 (a) As used in W.S. 14-3-201 through 14-3-216:

12
13 (ii) "Abuse" means inflicting or causing
14 physical or mental injury, harm or imminent danger to the
15 physical or mental health or welfare of a child other than
16 by accidental means, including abandonment, unless the
17 abandonment is a relinquishment substantially in accordance
18 with W.S. 14-11-101 through 14-11-109, excessive or
19 unreasonable corporal punishment, malnutrition or
20 substantial risk thereof by reason of intentional or
21 unintentional neglect, and the commission or allowing the
22 commission of a sexual offense against a child as defined
23 by law:

1 (D) "Imminent danger" includes threatened
2 harm and means a statement, overt act, condition or status
3 which represents an immediate and substantial risk of
4 sexual abuse or physical or mental injury. "Imminent
5 danger" includes violation of W.S. 31-5-233(m) or
6 31-5-234(j).

7
8 **31-5-233. Driving or having control of vehicle while**
9 **under influence of intoxicating liquor or controlled**
10 **substances; penalties.**

11
12 (a) As used in this section:

13
14 (vi) "Child passenger" means a person traveling
15 in a vehicle who is under sixteen (16) years of age.

16
17 (e) Except as otherwise provided, a person convicted
18 of violating this section shall be ordered to or shall
19 receive a substance abuse assessment conducted by a
20 substance abuse provider certified by the department of
21 health pursuant to W.S. 9-2-2701(c) at or before
22 sentencing. The cost of the substance abuse assessment
23 shall be assessed to and paid by the offender. Except as
24 otherwise provided in this subsection or subsection (h) or

1 (m) of this section, a person convicted of violating this
2 section is guilty of a misdemeanor punishable by
3 imprisonment for not more than six (6) months, a fine of
4 not more than seven hundred fifty dollars (\$750.00), or
5 both. On a second conviction within five (5) years after a
6 conviction for a violation of this section or other law
7 prohibiting driving while under the influence, he shall be
8 punished by imprisonment for not less than seven (7) days
9 nor more than six (6) months, he shall be ordered to or
10 shall receive a substance abuse assessment conducted by a
11 substance abuse provider certified by the department of
12 health pursuant to W.S. 9-2-2701(c) before sentencing and
13 shall not be eligible for probation or suspension of
14 sentence or release on any other basis until he has served
15 at least seven (7) days in jail. In addition, the person
16 may be fined not less than two hundred dollars (\$200.00)
17 nor more than seven hundred fifty dollars (\$750.00). On a
18 third conviction within five (5) years after a conviction
19 for a violation of this section or other law prohibiting
20 driving while under the influence, he shall be punished by
21 imprisonment for not less than thirty (30) days nor more
22 than six (6) months, shall receive a substance abuse
23 assessment pursuant to W.S. 7-13-1302 and shall not be
24 eligible for probation or suspension of sentence or release

1 on any other basis until he has served at least thirty (30)
2 days in jail except that the court shall consider the
3 substance abuse assessment and may order the person to
4 undergo outpatient alcohol or substance abuse treatment
5 during any mandatory period of incarceration. The minimum
6 period of imprisonment for a third violation shall be
7 mandatory, but the court, having considered the substance
8 abuse assessment and the availability of public and private
9 resources, may suspend up to fifteen (15) days of the
10 mandatory period of imprisonment if, subsequent to the date
11 of the current violation, the offender completes an
12 inpatient treatment program approved by the court. In
13 addition, the person may be fined not less than seven
14 hundred fifty dollars (\$750.00) nor more than three
15 thousand dollars (\$3,000.00). The judge may suspend part or
16 all of the discretionary portion of an imprisonment
17 sentence under this subsection and place the defendant on
18 probation on condition that the defendant pursues and
19 completes an alcohol education or treatment program as
20 prescribed by the judge. Notwithstanding any other
21 provision of law, the term of probation imposed by a judge
22 under this section may exceed the maximum term of
23 imprisonment established for the offense under this
24 subsection provided the term of probation together with any

1 extension thereof, shall not exceed three (3) years for up
2 to and including a third conviction. On a fourth or
3 subsequent conviction within five (5) years for a violation
4 of this section or other law prohibiting driving while
5 under the influence, he shall be guilty of a felony and
6 fined not more than ten thousand dollars (\$10,000.00),
7 punished by imprisonment for not more than two (2) years,
8 or both.

9
10 (m) Any person over the age of seventeen (17) who has
11 a child passenger in the vehicle during a violation of this
12 section shall be punished upon conviction as follows:

13
14 (i) For a first conviction under this
15 subsection, by imprisonment for not more than one (1) year;

16
17 (ii) If previously convicted and sentenced under
18 any provision of this section, or any other law
19 substantially conforming to the provisions of this section,
20 by imprisonment for not more than five (5) years; and

21
22 (iii) For purposes of calculating if an
23 individual has a second or subsequent conviction for a
24 violation of this section or other law prohibiting driving

1 while under the influence with a child passenger in the
2 vehicle, any dismissal of a charge pursuant to W.S.
3 7-13-301 for a violation of this section or other law
4 prohibiting driving under the influence with a child
5 passenger in the vehicle shall be counted as a conviction
6 for purposes of this section.

7
8 **31-5-234. Unlawful operation of vehicle by youthful**
9 **driver with detectable alcohol concentration; penalty.**

10
11 (a) As used in this section:

12
13 (v) "Child passenger" means a person traveling
14 in a vehicle who is under sixteen (16) years of age.

15
16 (g) The court may, upon pronouncement of any jail
17 sentence under ~~subsection (e) of~~ this section, provide in
18 the sentence that the defendant may be permitted, if he is
19 employed or enrolled in school and can continue his
20 employment or education, to continue such employment or
21 education for not more than the time necessary as certified
22 by his employer or school administrator, and the remaining
23 day, days or parts of days shall be spent in jail until the
24 sentence is served. He shall be allowed out of jail only

1 long enough to complete his actual hours of employment or
2 education and a reasonable time to travel to and from his
3 place of employment or school. Unless the defendant is
4 indigent, the court shall require him as a condition of
5 special treatment under this subsection to pay a reasonable
6 amount for room and board as determined by the sheriff.

7
8 (j) Any person over the age of seventeen (17) who has
9 a child passenger in the vehicle during a violation of this
10 section shall be punished upon conviction as follows:

11
12 (i) For a first conviction under this
13 subsection, by imprisonment for not more than one (1) year;

14
15 (ii) If previously convicted and sentenced under
16 any provision of this section, or any other law
17 substantially conforming to the provisions of this section,
18 by imprisonment for not more than five (5) years; and

19
20 (iii) For purposes of calculating if an
21 individual convicted under this subsection for having a
22 child passenger in the vehicle has a prior conviction under
23 any provision of this section or other law prohibiting a
24 person under twenty-one (21) years of age from driving or

1 having actual physical control of a vehicle while having an
2 alcohol concentration of two one-hundredths of one percent
3 (0.02%) or more, any dismissal of a charge under this
4 section or other law prohibiting a person under twenty-one
5 (21) years of age from driving or having actual physical
6 control of a vehicle while having an alcohol concentration
7 of two one-hundredths of one percent (0.02%) or more shall
8 be counted as a conviction for purposes of this section.

9
10 **Section 2.** This act is effective immediately upon
11 completion of all acts necessary for a bill to become law
12 as provided by Article 4, Section 8 of the Wyoming
13 Constitution.

14

15 (END)