

HOUSE BILL NO. HB0207

Adult pretrial diversion programs.

Sponsored by: Representative(s) Pelkey, Burlingame,
Connolly, Lindholm, Miller, Olsen, Salazar
and Zwonitzer and Senator(s) Bouchard,
Nethercott and Rothfuss

A BILL

for

1 AN ACT relating to criminal procedure; authorizing the
2 creation of adult pretrial diversion programs as specified;
3 requiring criteria and specifying procedures for adult
4 pretrial diversion programs established under this act;
5 making conforming amendments; specifying applicability; and
6 providing for an effective date.

7

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

9

10 **Section 1.** W.S. 7-13-308 is created to read:

11

12 **7-13-308. Adult pretrial diversion program.**

13

1 (a) As used in this section, "pretrial diversion"
2 means the decision of a district attorney to refer a
3 defendant to an adult pretrial diversion program
4 established under this section on condition that the
5 criminal charges against the defendant shall be dismissed,
6 or the case shall not be charged, upon the defendant's
7 completion of the program.

8

9 (b) A district attorney may establish an adult
10 pretrial diversion program for a defendant charged with a
11 criminal offense in that county, subject to the
12 requirements of this section. Any program established under
13 this section shall be operated independently of the
14 department of corrections and the state board of parole.

15

16 (c) In order to be eligible to participate in an
17 adult pretrial diversion program established under
18 subsection (b) of this section, a defendant shall:

19

20 (i) Be not less than eighteen (18) years and not
21 more than twenty-five (25) years of age;

22

23 (ii) Consent to participation in the program;

1

2 (iii) Have not previously been convicted of any
3 felony;

4

5 (iv) Pay any fees and charges that are required
6 as provided in subsection (h) of this section;

7

8 (v) Not be charged with any of the following
9 offenses:

10

11 (A) A second or subsequent violation of
12 W.S. 31-5-233 or any similar provision of law;

13

14 (B) A second or subsequent violation of
15 W.S. 6-2-510 or 6-2-511 or any similar provision of law;

16

17 (C) Any violent felony as defined in W.S.
18 6-1-104(a)(xii).

19

20 (vi) Have not already participated in or
21 completed an adult pretrial diversion program;

22

1 (vii) Have not previously received a deferral of
2 prosecution under W.S. 7-13-301;

3

4 (viii) Be required to comply with all federal,
5 state and local laws;

6

7 (ix) For defendants charged with a first
8 violation of W.S. 31-5-233, comply with the requirements of
9 W.S. 31-5-233(f);

10

11 (x) Satisfy any other program criteria
12 established by the district attorney.

13

14 (d) An adult pretrial diversion program established
15 under this section may include:

16

17 (i) Individual counseling and guidance;

18

19 (ii) Restitution to the victim, as provided in
20 paragraph (h)(iv) of this section;

21

22 (iii) Referral services for a defendant to be
23 sent for treatment and rehabilitation;

1

2 (iv) Community service.

3

4 (e) Except as otherwise provided in this subsection,
5 a defendant diverted to a program established under this
6 section shall participate in the program for not more than
7 ninety (90) days. The district attorney may extend the
8 defendant's participation in the adult pretrial diversion
9 program as a disciplinary measure or to allow sufficient
10 time for completion of treatment or payment of restitution.
11 In no event shall a defendant spend more than one hundred
12 eighty (180) days in an adult pretrial diversion program.

13

14 (f) A defendant shall be eligible to participate in a
15 program established under this section upon the consent of
16 the district attorney in the county where the defendant
17 would complete the program.

18

19 (g) The diversion of a defendant to an adult pretrial
20 diversion program created under this section shall be a
21 matter of grace and not a right of defendants. A decision
22 by a district attorney to not consent to a defendant's
23 diversion into a program or a district attorney's decision

1 to terminate a defendant from a program shall not be
2 subject to appeal and shall not be raised as a defense to
3 any prosecution.

4

5 (h) A district attorney who has established an adult
6 pretrial diversion program under this section may charge
7 defendants the following fees and charges for participation
8 in the program:

9

10 (i) A fee not to exceed two hundred fifty
11 dollars (\$250.00), payable to the county treasurer in the
12 county where the defendant is participating in the
13 diversion program, for costs associated with participation
14 in the program;

15

16 (ii) The surcharge authorized in W.S.
17 7-13-1616(a);

18

19 (iii) The surcharge authorized in W.S.
20 1-40-119(a) and (f);

21

1 (iv) Restitution, payable to the victim, as
2 fixed and approved by the court as provided in W.S.
3 7-9-103.

4
5 (j) If a defendant violates a term or condition of
6 the adult pretrial diversion program, the district attorney
7 may terminate the defendant's participation in the program
8 and may refile the charges against the defendant. Not
9 later than seven (7) days after termination from the
10 program, the district attorney shall provide in writing to
11 the defendant the specific reasons for the defendant's
12 termination from the adult pretrial diversion program.

13
14 **Section 2.** W.S. 1-40-119(b) and by creating a new
15 subsection (f), 7-9-103(a), 7-9-104(a)(intro),
16 7-13-1616(b), 7-19-301(a)(iii), 7-19-401(a)(ii), 9-1-804 by
17 creating a new subsection (d), 18-3-302 by creating a new
18 subsection (d), 21-2-802(g)(i), 31-5-233(f)(intro) and
19 (ii), 33-15-112(a)(i) and 33-15-121(a)(i) are amended to
20 read:

21
22 **1-40-119. Surcharge to be assessed in certain**
23 **criminal cases; paid to account.**

1

2 (b) The surcharge enumerated in subsection (a) of
3 this section shall be imposed upon any defendant for whom
4 prosecution, trial or sentence is deferred under W.S.
5 7-13-301 and 7-13-302 or who participates in any other
6 diversion agreement, except an adult pretrial diversion
7 program under W.S. 7-13-308.

8

9 (f) The surcharge enumerated in subsection (a) of
10 this section may be imposed upon any defendant who
11 participates in an adult pretrial diversion program
12 established under W.S. 7-13-308.

13

14 **7-9-103. Determination of amount owed; execution.**

15

16 (a) As part of the sentencing process including
17 deferred prosecutions under W.S. 7-13-301 and diversions
18 under W.S. 7-13-308, in any misdemeanor or felony case, the
19 prosecuting attorney shall present to the court any claim
20 for restitution submitted by any victim.

21

22 **7-9-104. Preparation of plan; contents.**

23

1 (a) In any case in which the court has ordered
2 restitution under W.S. 7-9-102, 7-9-113, ~~or~~ 7-13-301 or
3 7-13-308, if the sentencing court orders suspended
4 imposition of sentence, suspended sentence or probation,
5 the court shall require that the defendant in cooperation
6 with the probation and parole officer assigned to the
7 defendant, or in the case of unsupervised probation any
8 probation and parole officer or any other person the court
9 directs, promptly prepare a plan of restitution including
10 the name and address of each victim, the amount of
11 restitution determined to be owed to each victim pursuant
12 to W.S. 7-9-103 or 7-9-114 and a schedule of restitution
13 payments. If the defendant is presently unable to make any
14 restitution but there is a reasonable possibility that the
15 defendant may be able to do so at some time during his
16 probation period, the plan of restitution shall also state
17 the conditions under which or the event after which the
18 defendant shall make restitution. In structuring a plan for
19 reimbursement under this section, victim restitution shall
20 be paid in the following order:

21

22 **7-13-1616. Surcharge to be assessed in certain**
23 **criminal cases; paid to account.**

1

2 (b) The surcharge may be imposed upon any defendant
3 for whom prosecution, trial or sentence is deferred under
4 W.S. 7-13-301 and 7-13-302 or 35-7-1037 and upon a
5 defendant who participates in an adult pretrial diversion
6 program under W.S. 7-13-308 or who participates in any
7 other diversion agreement for an offense specified in
8 subsection (a) of this section.

9

10 **7-19-301. Definitions.**

11

12 (a) Unless otherwise provided, for the purposes of
13 this act:

14

15 (iii) "Convicted" includes pleas of guilty, nolo
16 contendere, verdicts of guilty upon which a judgment of
17 conviction may be rendered and adjudications as a
18 delinquent for offenses specified in W.S. 7-19-302(j).
19 "Convicted" shall not include dispositions pursuant to W.S.
20 7-13-301 or 7-13-308;

21

22 **7-19-401. Definitions.**

23

1 (a) For purposes of this act:

2

3 (ii) "Convicted" includes pleas of guilty, nolo
4 contendere and verdicts of guilty upon which a judgment of
5 conviction may be rendered. "Convicted" shall not include
6 dispositions pursuant to W.S. 7-13-301, 7-13-308 or
7 35-7-1037;

8

9 **9-1-804. Duties and powers generally; employment of**
10 **deputy and assistant district attorneys and other necessary**
11 **personnel.**

12

13 (d) Each district attorney may establish an adult
14 pretrial diversion program as provided in W.S. 7-13-308.

15

16 **18-3-302. Duties generally; employment of other**
17 **attorneys by county.**

18

19 (d) Each county attorney may establish an adult
20 pretrial diversion program as provided in W.S. 7-13-308.

21

22 **21-2-802. Powers and duties; teacher certification;**
23 **suspension and revocation; certification fees; disposition**

1 of collected fees; required data submissions to department
2 of education.

3

4 (g) For purposes of this section:

5

6 (i) "Convicted" or "conviction" means an
7 unvacated determination of guilt by any court having legal
8 jurisdiction of the offense and from which no appeal is
9 pending. Pleas of guilty and nolo contendere shall be
10 deemed convictions for the purposes of this section.
11 Dispositions pursuant to W.S. 7-13-301, 7-13-308 or
12 35-7-1037 shall not be convictions for purposes of this
13 section;

14

15 **31-5-233. Driving or having control of vehicle while**
16 **under influence of intoxicating liquor or controlled**
17 **substances; penalties.**

18

19 (f) Any person convicted under this section or other
20 law prohibiting driving while under the influence as
21 defined in W.S. 31-5-233(a)(v), ~~or~~ whose prosecution under
22 this section is deferred under W.S. 7-13-301 or who is

1 diverted into an adult pretrial diversion program under
2 W.S. 7-13-308, shall, in addition to the penalty imposed:

3
4 (ii) Except as provided in subsection (n) of
5 this section, for a first conviction, ~~or~~ for a prosecution
6 deferred under W.S. 7-13-301 or for a person placed in an
7 adult pretrial diversion program under W.S. 7-13-308, where
8 the department's administrative action indicates the person
9 had an alcohol concentration of fifteen one-hundredths of
10 one percent (0.15%) or more, operate only vehicles equipped
11 with an ignition interlock device, pursuant to W.S.
12 31-7-401 through 31-7-404, for a period of six (6) months.
13 For purposes of this paragraph, the department's
14 administrative action shall be deemed to indicate a person
15 had an alcohol concentration of fifteen one-hundredths of
16 one percent (0.15%) or more only after the person is
17 notified of and given the opportunity to pursue the
18 administrative procedures provided by W.S. 31-7-105;

19
20 **33-15-112. Grounds and procedure for revocation or**
21 **suspension of license.**

22

1 (a) The board may refuse to issue or renew a license,
2 may suspend or revoke a license, may reprimand, restrict or
3 impose conditions on the practice of a dentist for any one
4 (1) or more of the following causes:

5
6 (i) Conviction of, entry of a plea of nolo
7 contendere to, ~~or~~ entry of a deferred prosecution agreement
8 pursuant to W.S. 7-13-301 or agreement to participate in an
9 adult pretrial diversion program under W.S. 7-13-308 for a
10 felony or misdemeanor that relates adversely to the
11 practice of dentistry or the ability to practice dentistry;

12
13 **33-15-121. Grounds and proceedings for suspension of,**
14 **revocation of, or refusal to renew license.**

15
16 (a) The board may refuse to issue or renew, or may
17 suspend or revoke, the license of any dental hygienist for
18 any of the following causes:

19
20 (i) Conviction of, entry of a plea of nolo
21 contendere to, ~~or~~ entry of a deferred prosecution agreement
22 pursuant to W.S. 7-13-301 or agreement to participate in an
23 adult pretrial diversion program under W.S. 7-13-308 for a

1 felony or misdemeanor that relates adversely to the
2 practice of dental hygiene or the ability to practice
3 dental hygiene;

4

5 **Section 3.** This act shall not apply to criminal
6 charges filed before the effective date of this act.

7

8 **Section 4.** This act is effective July 1, 2020.

9

10

(END)