

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Judiciary Committee-obsolete provisions.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to obsolete provisions; amending and
2 clarifying specified statutory provisions that were
3 assigned to the Joint Judiciary Interim Committee; and
4 providing for an effective date.

5

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

7

***** STAFF COMMENT *****

8 The Management Council assigned the following
9 statutory provisions to the Joint Judiciary
10 Interim Committee to address possible obsolete
11 language contained in the sections. The Joint
12 Judiciary Interim Committee is charged with
13 considering the statutory provisions and deciding
14 what changes, if any, to recommend to Management
15 Council. Any changes approved by the Joint
16 Judiciary Interim Committee to the statutes in
17 this document will then be provided to Management
18 Council for possible inclusion in a bill the
19 Council will be introducing in the 2011 General
20 Session.

21

1 [SECTION 1. PROVISIONS AFFECTED BY COURT DECISIONS]

2 [a. PROVISIONS HELD TO BE UNCONSTITUTIONAL]

3

4 Section 101. W.S. 1-39-117(a), 5-6-202(b), 5-6-
5 301(b), 6-10-105 and 7-11-504 are amended to read:

6

7 1-39-117. Jurisdiction; appeals; venue; trial by
8 jury; liability insurance.

9

10 (a) Original and exclusive jurisdiction for any claim
11 filed in state court under this act shall be in the
12 district courts of Wyoming. Any claims filed under this
13 act in a federal court pursuant to 28 U.S.C. 1367 shall not
14 be subject to the jurisdictional restrictions applicable to
15 claims filed in state court specified in this subsection.
16 Appeals may be taken as provided by law.

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*** STAFF COMMENT ***

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This section was declared unconstitutional to the extent it confers exclusive jurisdiction on the district courts of the state, thereby limiting the supplemental jurisdiction of a federal court over tort claims, *Scott v. School District No. 6*, 815 F.Supp. 424 (D. Wyo. 1993). The recommendation of the Committee in May, 2010, was to retain the term "exclusive jurisdiction" but to specify that the restriction applied to state court actions, and to add language so practitioners would know that the jurisdictional restriction

1 does not apply to cases under the act filed
2 in federal court as specified in the *Scott*
3 case.
4

5 5-6-202. Powers and duties of municipal judge
6 generally; court to open every day except Sunday.
7

8 (b) The municipal judge shall enforce due obedience
9 to all orders, rules and judgments made by him. The judge
10 has the same power as the district court in the issuance of
11 warrant, search warrant, subpoena or other necessary
12 process and may fine or imprison for contempt offered to
13 him or to process issued by him in the same manner and to
14 the same extent as the district court. Before any person
15 is imprisoned for the willful refusal to pay a fine, the
16 court shall determine whether the defendant has an ability
17 to pay or that a reasonable probability exists that the
18 defendant will have an ability to pay.

19 *** STAFF COMMENT ***
20 W.S. 5-6-211 was assigned to the Committee to
21 consider how to address imprisonment of an
22 indigent person for nonpayment of a fine due to
23 indigency pursuant to the holding in *Whiteplum v.*
24 *City of Riverton*, Civ. No. C81-068K (D. Wyo.
25 1981). Because the powers of the municipal court
26 are addressed in W.S. 5-6-202(b), the language
27 restricting imprisonment of indigent persons was
28 added there. The new proposed language is based
29 on language found in W.S. 7-11-505.
30

1 5-6-301. Punishment of persons convicted before
2 judge; maximum penalty permitted; power to punish for
3 contempt.

4
5 (b) The municipal judge shall punish for contempt in
6 the same manner as district court. Before any person is
7 imprisoned for the willful refusal to pay a fine, the court
8 shall determine whether the defendant has an ability to pay
9 or that a reasonable probability exists that the defendant
10 will have an ability to pay.

11 *** STAFF COMMENT ***

12 To address imprisonment of an indigent person for
13 nonpayment of a fine due to indigency pursuant to
14 the holding in *Whiteplum v. City of Riverton*,
15 Civ. No. C81-068K (D. Wyo. 1981), the language
16 restricting imprisonment of indigent persons was
17 in this section, based on language found in W.S.
18 7-11-505.

19
20 6-10-105. Commitment for refusal to pay fine or
21 costs; rate per day.

22
23 A person committed to jail for willfully refusing to pay a
24 fine or costs may be imprisoned if the court determines
25 that the defendant has an ability to pay or that a
26 reasonable probability exists that the defendant will have
27 an ability to pay, until the imprisonment, at the rate of

1 fifteen dollars (\$15.00) per day, equals the amount of the
2 fine or costs, or the amount shall be paid or secured to be
3 paid when he is discharged.

4 *** STAFF COMMENT ***

5 To address imprisonment of an indigent person for
6 nonpayment of a fine due to indigency pursuant to
7 the holding in *Whiteplum v. City of Riverton*,
8 Civ. No. C81-068K (D. Wyo. 1981), the language
9 restricting imprisonment of indigent persons was
10 in this section, based on language found in W.S.
11 7-11-505.
12

13 7-11-504. Commitment until fine and costs paid.
14

15 If a defendant sentenced to pay a fine or costs defaults
16 in payment, the court may order the defendant to show cause
17 why he should not be committed to jail. If the court finds
18 that the defendant's default is willful or is due to a
19 failure on defendant's part to make a good faith effort to
20 obtain the funds required for the payment and the court
21 determines that the defendant has an ability to pay or that
22 a reasonable probability exists that the defendant will
23 have an ability to pay, the court may order him committed
24 until the fine or costs, or a specified part thereof, is
25 paid. The defendant shall be given a credit for each day
26 of imprisonment at the rate provided by W.S. 6-10-105, and
27 may earn additional credits against his fine or costs for

1 work performed as provided by W.S. 7-16-101 through 7-16-
2 104.

3 *** STAFF COMMENT ***

4 To address imprisonment of an indigent person for
5 nonpayment of a fine due to indigency pursuant to
6 the holding in *Whiteplum v. City of Riverton*,
7 Civ. No. C81-068K (D. Wyo. 1981), the language
8 restricting imprisonment of indigent persons was
9 in this section, based on language found in W.S.
10 7-11-505.
11

12 [SECTION 2. PROVISIONS WHICH ARE OBSOLETE]

13 [c. ARCHAIC REFERENCES]

14

15 **Section 206.** W.S. 1-40-112(c) and 7-3-705(a)(ii)(C)

16 are amended to read:

17

18 **1-40-112. Recovery from offender; restitution.**

19

20 (c) Restitution by an offender under W.S. 7-9-101

21 through ~~7-9-112~~7-9-115 shall:

22

*** STAFF COMMENT ***

23 The recommendation of the Committee in May, 2010,
24 was to expand the cross-reference in subsection
25 (c) to include W.S. 7-9-114 and 7-9-115, relating
26 to restitution for long-term care under the
27 victims' compensation statutes. The restitution
28 for long-term care provisions were enacted in
29 1991, subsequent to when W.S. 1-40-112(c)(intro)
30 was created in 1985.
31

1 7-3-705. Authorization for interception of wire, oral
2 or electronic communications.

3
4 (a) The attorney general or the district attorney
5 within whose jurisdiction the order is sought in
6 conjunction with the attorney general, may authorize an
7 application to a judge of competent jurisdiction for an
8 order authorizing the interception of wire, oral or
9 electronic communications by the Wyoming division of
10 criminal investigation, federal criminal law enforcement
11 agency or any law enforcement agency of the state having
12 responsibility for investigation of the offense for which
13 the application is made, if the interception may provide
14 evidence of an attempt to commit, conspiracy to commit,
15 solicitation to commit or the commission of any of the
16 following felony offenses or comparable crimes in any other
17 jurisdiction:

18
19 (ii) Any of the following, if incident to or
20 discovered during investigation of a violation of the
21 Wyoming Controlled Substances Act of 1971:

22

1 (C) First or second degree sexual assault
 2 as defined in W.S. 6-2-302 and 6-2-303, or any of the
 3 offenses specified in W.S. 6-2-314 through 6-2-318;

4 *** STAFF COMMENT ***
 5 The offenses listed under W.S. 6-2-314 through 6-
 6 2-318, sexual abuse of a minor and soliciting to
 7 engage in illicit sexual relations are felony
 8 level offenses that were enacted subsequent to
 9 the enactment of W.S. 7-3-705. The question is:
 10 Should the offenses listed under subparagraph
 11 (a)(ii)(C) of this section be expanded to include
 12 the felony sex offenses against minors?
 13

14 [SECTION 2. PROVISIONS WHICH ARE OBSOLETE]

15 [d. OTHER ARCHAIC USES]

16
 17 **Section 208.** W.S. 6-1-103(a), 7-16-205 by creating a
 18 new subsection (f) and 7-18-114 are amended to read:

19
 20 **6-1-103. Civil recovery for criminal act; conviction**
 21 **as evidence in civil suit.**

22
 23 (a) Nothing in this act prevents a party whose person
 24 or property is injured by a criminal act from recovering
 25 full damages, provided the party whose person or property
 26 is injured by the criminal act is not convicted of:

27

1 (i) Commission of the criminal act that resulted
2 in the injury: or,

3

4 (ii) Solicitation, conspiracy or attempt to
5 commit the act.

6

*** STAFF COMMENT ***

7 This provision could be interpreted to mean that
8 a defendant in a criminal case could recover from
9 the victim, if the defendant is injured in the
10 course of committing the criminal act. The
11 recommendation is to insert language clarifying
12 that a person who is convicted of an offense
13 relating to the injurious criminal act may not
14 recover for his wrong-doing.

15

16 7-16-205. Disposition of earnings; confidentiality of
17 amount.

18

19 (f) Except as provided by W.S. 20-6-201 through 20-6-
20 222, the earnings of inmates under this act are not subject
21 to garnishment, attachment or execution.

22

*** STAFF COMMENT ***

23 Unlike W.S. 7-16-308(b), which provides an
24 exception "as provided by W.S. 20-6-201 through
25 20-6-222," which then allows child support
26 obligations to be garnished, attached or
27 executed, this section provides no such
28 exception. Not identified at the May meeting of
29 the Joint Judiciary Interim Committee, this new
30 subsection would make this section consistent
31 with W.S. 7-16-308(b), as it currently exists,
32 and W.S. 7-18-114(d), as amended in the following
33 statute.

34

1 7-18-114. Record and disbursement of wages; exemption
2 from process; confidentiality of amount.

3

4 (d) Except as provided by W.S. 20-6-201 through 20-6-
5 222, the earnings of inmates under this act are not subject
6 to garnishment, attachment or execution.

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*** STAFF COMMENT ***

8 Unlike W.S. 7-16-308(b), which provides an
9 exception "as provided by W.S. 20-6-201 through
10 20-6-222," which then allows child support
11 obligations to be garnished, attached or
12 executed, this subsection provides no such
13 exception. The former subsection relates to
14 earnings under a work release program, while the
15 instant subsection relates to earnings of an
16 inmate who is participating in a community
17 corrections program, so there might not be a
18 valid reason why the earnings in the two programs
19 are subject to different requirements. The
20 recommendation is to insert language similar to
21 the introductory clause in W.S. 7-16-308(b) into
22 subsection (d) of this section.

23

24

(END)